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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

No. 298

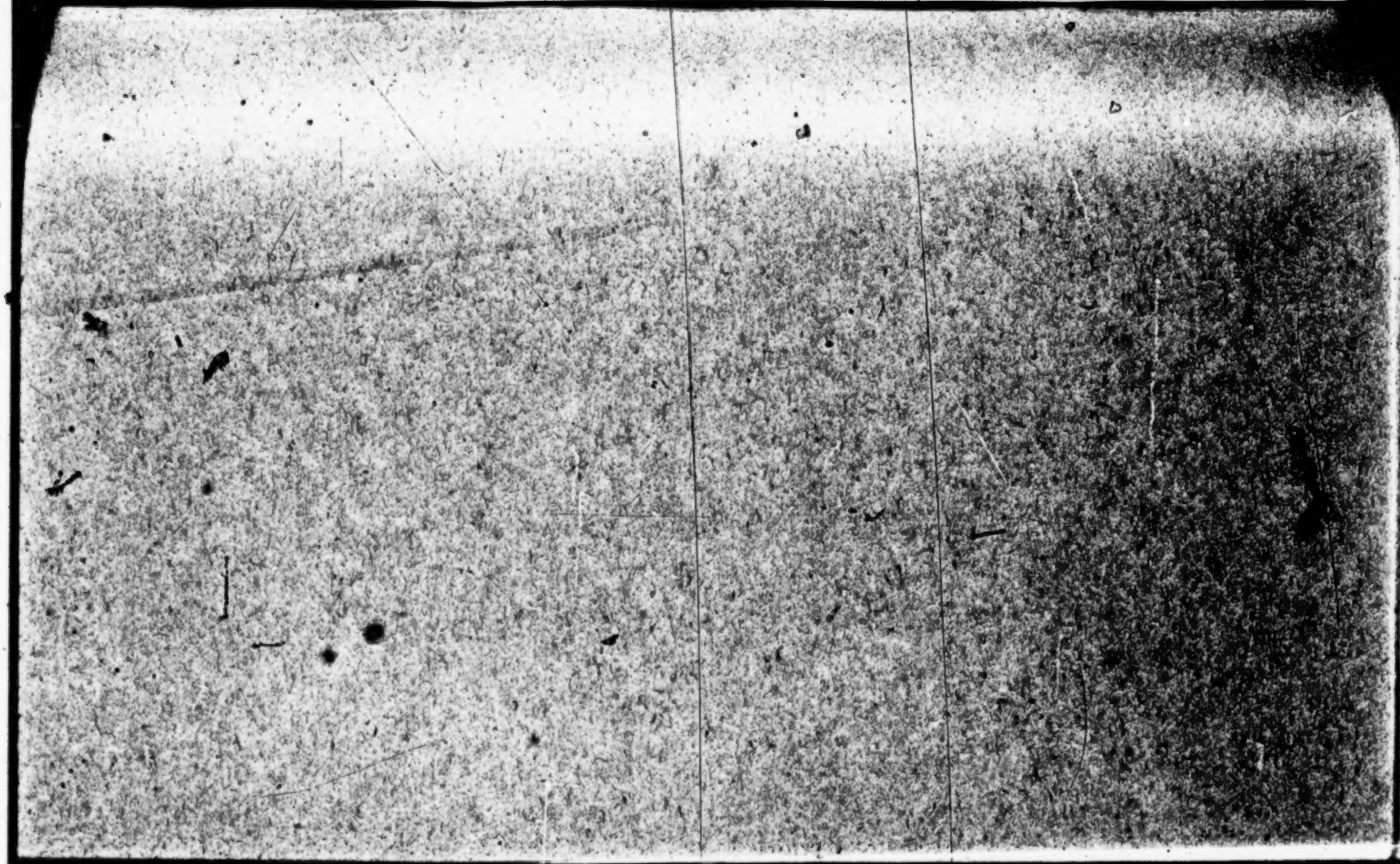
STOCKHOLDERS OF PEOPLES BANKING COMPANY OF SMITHSBURG, MARYLAND, APPELLANTS,

vs.

WARREN F. STERLING, RECEIVER FOR PEOPLES BANKING COMPANY OF SMITHSBURG, MARYLAND, ETC.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF MARYLAND

FILED JANUARY 30, 1937



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STATE OF MARYLAND

VS.

THE PEOPLES BANKING COMPANY

OF SMITHSBURG, MARYLAND

A Body Coporate

NO. 12,277 EQUITY

IN THE CIRCUIT COURT

FOR WASHINGTON COUNTY

SITTING AS A COURT OF EQUITY

TITLING

STATE OF MARYLAND Vs. THE PEOPLES BANKING COMPANY OF SMITHSBURG, MARYLAND, A Body Corporate	NO. 12,277 EQUITY IN THE CIRCUIT COURT FOR WASHINGTON COUNTY IN EQUITY

Upon the filing of a proper Bill of Complaint and other necessary prerequisites, a decree was duly passed under which John J. Ghingher, Bank Commissioner of the State of Maryland duly qualified as Receiver of said Bank.

PETITION AND ORDER OF COURT THEREON DETERMINING STOCKHOLDERS' LIABILITY AND AUTHORIZING RECEIVER TO COLLECT AND ENFORCE PAYMENT THEREOF.

STATE OF MARYLAND Vs. THE PEOPLES BANKING COMPANY OF SMITHSBURG, MARYLAND, A Body Corporate	NO. 12,277 EQUITY IN THE CIRCUIT COURT FOR WASHINGTON COUNTY SITTING AS A COURT OF EQUITY

To the Honorable, the Judges of said Court:

This, the petition of John J. Ghingher, Bank Commissioner for the State of Maryland, Receiver for The Peoples Banking Company of Smithsburg, Maryland, respectfully shows unto your Honors:

1.—That the defendant, in the pursuance of the provisions of Article 11 of the Annotated Code of Maryland, on the 24th day of January, A. D., 1910, became a banking corporation of the State of Maryland, having its principal office at Smithsburg, Washington County, Maryland, and having a total amount of capital stock of $20,000.00, the said capital stock being divided into two thousand shares of the par value of $10.00 each, the certificate of incorporation being duly certified that the same was executed in conformity with law by M. L. Keedy, an Associate Judge of the Fourth Judicial District in the State of Maryland, and being recorded

in Liber No. 2, folio 137, one of the Charter Records for Washington County, Maryland, the same having been recorded February 3rd, 1910, a duly certified copy of the same marked "Exhibit Certificate of Incorporation" being herewith filed as part hereof.

2.—That under the provisions of the said certificate or article of incorporation, the defendant began to function and continued to function as a banking corporation until the 13th day of January, 1922, when Article 4 of said certificate or articles of incorporation was changed and amended so as to read as follows: "The total amount of the capital stock of said Bank is $20,000.00 divided into 2,000 — of the par value of $10.00 each be and the same is hereby changed to read as follows: 'The total amount of capital stock of said Bank is $40,000.00 divided into 4,000 — of the par value of $10.00 each.' The price to be paid for the new stock is $25.00 per share."

And that said certificate or articles of incorporation were duly approved by George W. Page, Bank Commissioner of the State of Maryland and certified that the same had been duly submitted to Frank G. Wagaman, an Associate Judge of the Fourth Judicial Circuit of the State of Maryland, and by him further certified that the same were executed in conformity with law and duly recorded in Liber No. 3, folio 30, one of the Charter Records for Washington County, Maryland, having been recorded January 13, 1922, a duly certified copy of the same marked "Exhibit Amended " being herewith filed as part hereof.

3.—That all of the shares of the capital stock of the said defendant corporation, authorized by said amendment, to wit: The number of 4,000 shares of the par value of $10.00 each were issued and outstanding at the time your petitioner took charge of its affairs and assets.

4.—That by Section 39 of Article III, of the Constitution of Maryland, it is provided as follows:

"The General Assembly shall grant no charter for banking purposes, no — renew any Banking Corporation now in existence, except upon the condition that the Stockholders shall be liable to the amount of their respective share or shares of stock in such Banking Institution, for all its debts and liabilities upon note, bill or otherwise . . . "

5.—And that by Section 72 of Article 11 of the Annotated Code of Maryland it is provided as follows:

"Stockholders of every bank and trust company shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts and engagements of every such corporation, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such stock. Persons having stock entered on the books of the corporation in their names as executor, administrator, guardian, trustee or pledgee, shall not be personally subject to any liability on such stock, but the one pledging stock, and the estate and funds in the hands of such executor, administrator, guardian or trustee shall be subject to the liability imposed upon the holders of said shares; and the liability of such stockholders shall be an asset of the corporation for the benefit ratably of all the depositors and creditors of any such corporation, if necessary to pay the debts of such corporation and shall be enforceable only by appropriate proceedings by a Receiver, assignee or trustee of such corporation acting under the orders of a court of competent jurisdiction. Nothing in this section or article shall be construed to repeal or effect the existing rights of creditors or liabilities of stockholders of any trust company under the existing law at the time of the passage or taking effect of this article."

6.—That in the course of the liquidation of the affairs of the said defendant bank, under the supervision of this Honorable Court, your petitioner has had an opportunity to ascertain the probable value of its property and the collectibility of its choses in action, and while it is impossible at this time to state the exact amount of the deficiency between the amount which will be realized in the final liquidation of the said bank, and the aggregate amount of its contracts, debts and engagements, your petitioner is in a position to state, with absolute certainty and therefore alleges, that said deficiency will be far in excess of $40,000.00, the aggregate par value of the authorized, issued and outstanding shares of the capital stock of the said corporation, that is to say, the payment in full of a sum equal to the par value of all the shares of the authorized capital stock of said bank, taken with all its other assets, will not discharge in full all of its contracts, debts and engagements, and your petitioner therefore alleges that it is necessary and proper that each stockholder of said bank be called upon to pay to your petitioner a sum equal to the par value of the share or shares of stock held by him.

Wherefore, your petitioner prays that an order may be passed determining and adjudging that each stockholder of said bank be called upon and required to pay to your petitioner a sum equal to the par value of the share or shares of stock held by him, and that your petitioner be authorized and directed to collect said sums of money and enforce payment thereof by appropriate legal proceedings.

Respectfully submitted,

JOHN J. GHINGHER,

Bank Commissioner.

Receiver for The Peoples Banking Company of Smithsburg, Maryland.

Elias B. Hartle,

Attorney for Petitioner.

STATE OF MARYLAND,

CITY OF BALTIMORE, ss:

I hereby certify that on this 17th day of June, 1933, before me, the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore, personally appeared John J. Ghingher, Bank Commissioner, Receiver for The Peoples Banking Company of Smithsburg, Maryland, and made oath in due form of law that the matters and facts set forth in the aforegoing petition are true to the best of his knowledge, information and belief.

Witness my hand and notarial seal.

(N. P. SEAL) Winifred A. Duggan, Notary Public.

Upon the aforegoing petition and affidavit, it is this 19th day of June, A. D. 1933, adjudged, ordered and decreed by the Circuit Court for Washington County, sitting as a Court of Equity, that each stockholder of The Peoples Banking Company of Smithsburg, Maryland, be, and he is hereby required to pay to John J. Ghingher, Bank Commissioner, Receiver for the said the Peoples Banking Company of Smithsburg, Maryland, an amount of money equal to the par value of the share or shares of the capital stock of the said The Peoples Banking Company of Smithsburg, Maryland, held by him, and it is further ordered that John J. Ghingher, Bank Commissioner as Receiver for The Peoples Banking Company of Smithsburg, Maryland, be, and he is hereby authorized and empowered to collect said sums

of money and to enforce payment thereof by appropriate legal proceedings.

FRANK G. WAGAMAN.

Filed June 19th, 1933.

Leave of Court having been first had and obtained the following petition was filed February 15, 1935:

PETITION TO RESCIND ORDER OF JUNE 19, 1933, AFFIDAVIT THERETO AND ORDER OF COURT THEREON.

STATE OF MARYLAND Vs. THE PEOPLES BANKING COMPANY OF SMITHSBURG, MARYLAND A Body Corporate	NO. 12,277 EQUITY IN THE CIRCUIT COURT FOR WASHINGTON COUNTY IN EQUITY

To the Honorable, the Judges of said Court:

This, the petition of Daniel E. Bachtell, Elizabeth K. Bachtell, Keller J. Beard, Victor P. Buhrman, Frank E. Bushey, Julia Newman Chandlee, Robert L. Funk, Edgar F. Gardenhour, G. William Gardenhour, Jos. O. Gardenhour, Raymond K. Gardenhour, Anna M. Harbaugh, Edward A. Harp, Mary E. Harp, Lancelot Jacques, Jr., Margaret N. Jacques, Myrtle E. Kohler, George A. Kohler, J. Oram Leiter, Edna L. Newcomer, David H. Newman, Jr., Howard P. Newman, Mrs. Hoy D. Newman, Anna F. Oller, Betty Jane Oller, Elmer H. Oller, Susanna Oller, Franklin B. Reynolds, Carrie Ridenour, George W. Ridge, Clayton L. Rohrer, Rachel S. Schwartz, Talbott B. Smith, Benjamin F. Snyder, Bessie G. Snyder, Gehr L. Snyder, E. A. Spessard, Anna B. Stem, Isobel O. Stottlemyer, Robert F. Towson, Josiah A. Warrenfeltz, J. W. Warrenfeltz, Rev. Clarence E. Wolfe, Harry E. Wolfe, Walter A. Wolfe, Edith H. Wolfinger, Mrs. Jason P. Snively, Richard A. Snively, D. Angle Wolfinger, respectfully represents unto your Honors:

1.—That your petitioners and others have been made defendants in a cause filed in this Court on January 28, 1935, by John J. Ghingher, Bank Commissioner of the State of Maryland, Receiver for The Peoples Banking Company of Smithsburg, Maryland, being No. 12,817 Equity in the Circuit Court for Washington County, in which cause it is sought to recover alleged

statutory double liability upon stock in said banking company alleged to be held by your petitioners and others.

2.—That your petitioners thereupon consulted counsel for the defense of said equity cause and many of them then for the first time learned of the passage by this Honorable Court of the order passed and filed in this cause on June 19, 1933, requiring each stockholder in said Banking Company to pay to said Receiver "an amount of money equal to the par value of the share or shares" held by him, and authorizing said Receiver to collect said sums by appropriate legal proceedings, by virtue of which order said aforementioned equity cause was filed.

3.—That your petitioners were thereupon advised, now believe and therefore allege that under the law in force in this State said order precludes them and each of them making any defense on the merits, to said equity cause, and precludes any denial of the need for, or liability of your petitioners upon, the assessment made in said order.

4.—That neither at the time of the passage of said order nor since have any of your petitioners or any other alleged stockholders of said Banking Company been actually made parties to this cause.

5.—That no actual notice or knowledge of the passage of the aforesaid order or of the filing of the petition on which said order was passed was had by your petitioners or any of them until after the enrollment of said order.

6.—That the said petition was presented and said order passed without notice to alleged stockholders and without opportunity to your petitioners or any of them or to other alleged stockholders in said banking company to intervene and defend against the passage of said order.

7.—That the aforesaid order of June 19, 1933, was passed in this cause ex parte upon the application of the aforesaid Receiver and as of course.

8.—That said order was passed without any hearing on the merits other than consideration of said petition and the affidavit thereto. And your petitioners say that said order was passed prematurely and without proper and sufficient proof of the necessity for said order of assessment, which proof your petitioners and others have the right to require.

9.—That the passage of said order was a surprise to your petitioners and the other alleged stockholders in said banking company.

10.—That your petitioners are informed, believe and therefore allege that the various debts and liabilities of said The Peoples Banking Company of Smithsburg, Maryland, for the payment of which recovery is sought in the aforementioned equity cause accrued against said bank at various times over a period of years and that all of said debts and liabilities did not accrue during the time that all of your petitioners were alleged holders of the stock of said banking company.

11.—That said order was passed without any allegation or proof that your petitioners held stock in said The Peoples Banking Company of Smithsburg, Maryland, at the time or times when the various debts and liabilities of said banking company accrued against it.

12.—That said order was passed without any allegation or proof that the various debts and liabilities of said bank accrued during such time or times as your petitioners were alleged holders of stock of said banking company.

13.—That your petitioners are informed, believe and therefore allege that even though they should be held liable to an assessment for any payment of double liability upon the shares of stock alleged to be held by them, that your said petitioners are, if liable at all, which they do not admit, liable only, under the provisions of the banking laws of Maryland, for such debts and liabilities of said bank as accrued during the respective periods during which they may be proved to have held stock therein.

14.—That the aforesaid order renders your petitioners liable as of course as alleged stockholders of said banking company and likewise renders them, if liable at all, which your petitioners do not admit, liable for larger sums of money than they, if liable, are required by law to pay.

15.—That the Statutes of Maryland, under and by virtue of which said order of assessment was passed, impair the obligation of contracts, are discriminatory and deprive your petitioners of equal protection of the law, deprive your petitioners of property without due process of law and otherwise contravene the provisions of the Constitutions of Maryland and of the United States.

16.—That your petitioners allege that they have a bona fide, substantial and meritorious defense to the suit filed against them and others as aforesaid.

17.—That to permit said order to remain in force would be inequitable deprivation of the rights of your petitioners.

Wherefore your petitioners pray:

a.—That the order of this Court passed June 19, 1933, assessing stockholders of The Peoples Banking Company of Smithsburg, Maryland, in an amount equal to the par value of their shares of stock may be rescinded and revoked.

b.—That if prayer (a) herein be refused, that said order may be modified so as to permit persons sued as stockholders of said bank to offer any and all defenses which they or any of them may have to the payment of stockholders statutory double liability.

c.—That your petitioners may have such other and further relief as their case may require.

Respectfully submitted,

D. ANGLE WOLFINGER,
CHARLES F. WAGAMAN,
JOHN WAGAMAN,
Solicitors for Petitioners.

STATE OF MARYLAND,

WASHINGTON COUNTY, to wit:

I hereby certify that on this 16th day of February, 1935, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared Edgar F. Gardenhour, one of the petitioners named in the aforegoing petition, who did make oath in due form of law that the matters and facts set forth in the aforegoing petition are true to the best of his knowledge, information and belief.

In witness whereof I have hereunto subscribed my hand and affixed my notarial seal this day and year last above written.

(N. P. SEAL) Paul L. Cartee, Notary Public.

ORDER OF COURT

The aforegoing petition and affidavit having been read and considered it is thereupon this 16th day of February, — by the Circuit Court for Washington County in Equity, adjudged and ordered that John J. Ghin-

gher, Bank Commissioner, Receiver of The Peoples Banking Company of Smithsburg, Maryland, show cause on or before the 6th day of March, 1935, why the relief prayed in the aforegoing petition should not be granted, provided a copy of this order be served on the Receiver of the Peoples Banking Company of Smithsburg, Maryland or his attorney of record on or before the 19th day of February, 1935.

FRANK G. WAGAMAN.

Service of the above order admitted this 16th day of February, 1935.

ELIAS B. HARTLE,

Attorney of Record for John J. Ghingher, Receiver.
Filed Feby. 15th, 1935.

PETITION TO INTERVENE, AFFIDAVIT THERETO AND ORDER OF COURT THEREON

STATE OF MARYLAND Vs. THE PEOPLES BANK-COMPANY OF SMITHSBURG, MARYLAND, A Body Corporate	NO. 12,277 EQUITY IN THE CIRCUIT COURT FOR WASHINGTON COUNTY IN EQUITY

To the Honorable, the Judges of said Court:

This, the petition of Earl R. Bachtell, Norris O. Bachtell, Robert L. Barkdoll, Louise F. Barlow, Preston H. Beard, Lorena N. Betts, Phillip M. Bikle, Samuel B. Bowman, J. Arby Brown, Grover A. Buhrman, C. L. Burgesser, Emma E. Burgesser, J. G. Dayhoff, Anna C. Delauter, J. William Detrow, Virgie C. Detrow, Robert L. Dickey, Howard J. Fehl, N. Pearl Fiery, Catherine A. Foltz, Annie M. Frey, Joseph M. Frey, Ella C. Gardenhour, George R. Garnand, Luhn E. Harp, Lula E. Harp, Barry M. Hartle, Stanley E. Hauver, James E. Hessong, Sadie E. Hessong, Mabel N. Hoffman, Martha M. Hoffman, George B. Hoover, Roberta L. Hoover, John B. Houser, Emory Kelbaugh, Irving A. Kelbaugh, Frank H. Kretsinger, J. Rodney Kretsinger, Ernest Kuhn, C. M. Leiter, Lewis A. Longnecker, Samuel Lowman, John A. Martin, Lydia M. Martin, Martha Moser, Samuel H. Murray, I. M. Newman, Allen H. Oswald, Irene Oswald, Mary V. Reynolds, Cora Ridenour, Elmer T. Ridenour, Beulah Ridenour, Laura Ridenour, Mrs. Clara B. Ridge, Charles H. Rinehart, Edith Ingram Roh-

rer, Frances E. Schaller—Admx. B. F. Shank, Nancy M. Schmick, A. E. Sensenbaugh, Barbara Shank—Admx. B. O. Shank, Mary S. Shank, Barry G. Sheiss, Alfred Smith, Allen C. Smith, Keiffer Smith, Emma K. Stockslager, John T. Stockslager, Mary V. Toms, U. S. Toms, Mary B. Towson, John E. Waltz, J. H. Warrenfeltz, Ardie W. Winters, Keturah Winters, Sherdie E. Winters, Louisa J. Wolfe, Charles C. Wolfe, Ira L. Wolfe, Charles I. Wolfinger, John E. Wagaman, George F. Diffendal, Trustees, respectfully represents unto your Honors:

1.—That by an order of this Honorable Court passed and filed in the above entitled cause on June 19, 1933, each stockholder in The Peoples Banking Company of Smithsburg, Maryland, was ordered to pay to John J. Ghingher, Bank Commissioner of the State of Maryland, Receiver for said Bank "an amount of money equal to the par value of the share or shares" held by him and which order further authorized and directed said Receiver to collect said sums by appropriate legal proceedings.

2.—That by virtue of said order said Receiver thereupon made claim against your petitioners as stockholders of said bank.

3.—That many of your petitioners paid to said Receiver the various amounts for which it was asserted by said Receiver that were liable but your said petitioners allege and aver that said payments were made by inadvertence and mistake and allege that they have bona fide, substantial and meritorious defenses against liability asserted against them by reason of their alleged holdings of stock in said banking company.

4.—That your petitioners desire and intend to file suit to recover said payments but your petitioners are advised and therefore allege that the order of this Honorable Court passed on the 19th day of June, 1933, is final and binding upon them and is not subject to collateral attack and that said order prevents them from freely prosecuting such suit or suits and materially hampers and embarrasses them in such suits and deprives them of rights which they believe and allege they have in the premises.

5.—That heretofore, to wit, on the ____ day of February, 1935, Daniel E. Bachtell, et al, filed a petition in the above entitled cause seeking the recision or modification of the aforesaid order; that your petitioners desire to intervene in said cause and to be made parties

thereto and to seek the recision of the aforesaid order as sought in the aforementioned petition.

Wherefore, your petitioners pray that this Honorable Court may pass an order authorizing them to intervene in the above entitled cause and to make them parties thereto.

Respectfully submitted,

D. ANGLE WOLFINGER,
CHARLES F. WAGAMAN,
JOHN WAGAMAN,
Solicitors for Petitioners.

STATE OF MARYLAND,
WASHINGTON COUNTY, to wit:

I hereby certify that on this 16th day of February, 1935, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared Barry M. Hartle, one of the petitioners in the aforegoing petition, who made oath in due form of law that the matters and facts contained in the aforegoing petition are true to the best of his knowledge, information and belief.

In witness whereof I have hereunto subscribed my hand and affixed my notarial seal this day and year last above written.

(N. P. SEAL) Marie B. Hartman, Notary Public.

ORDER OF COURT

The aforegoing petition and affidavit thereto, having been read and considered, it is thereupon this 16th day of February, 1935, by the Circuit Court for Washington County in equity, adjudged and ordered that the petitioners in the above entitled petition be and they are hereby authorized to intervene in the above entitled cause and it is further adjudged and ordered that they be and are hereby made parties in the petition filed in said above entitled cause on the 16th day of February, 1935.

FRANK G. WAGAMAN.

Filed Feby. 15th, 1935.

ANSWER TO PETITION TO SHOW CAUSE

STATE OF MARYLAND Vs. THE PEOPLES BANKING COMPANY OF SMITHSBURG, MARYLAND, A Body Corporate	NO. 12,277 EQUITY IN THE CIRCUIT COURT FOR WASHINGTON COUNTY SITTING AS A COURT OF EQUITY

To the Honorable, the Judges of said Court:

This, the answer of John J. Ghingher, Bank Commissioner, Receiver for The Peoples Banking Company of Smithsburg, Maryland, showing cause why the relief prayed for in a petition filed in said cause on February 15, 1935, by Daniel E. Bachtell, et al, stockholders of the defendant, should not be granted, and in compliance with the order of this Honorable Court dated February 16, 1935, respectfully shows unto your Honors:

1.—Answering the first paragraph of said petition, your respondent admits the same.

2.—Answering the second paragraph of said petition, your respondent says: That at various times between June 19, 1933, and the time of the filing of No. 12,817 Equity on January 28, 1935, the same being a suit to enforce the stockholders assessment, your respondent caused written notices to be mailed to each of the defaulting stockholders, including the petitioners, notifying them and each of them that their assessment liability on account of them being holders of stock in the defendant corporation had been imposed, and unless paid a suit would be brought for the recovery of the same.

3.—Answering the third paragraph of said petition, your respondent denies the same.

4.—Answering the fourth paragraph of said petition, your respondent says, that your respondent applied to and obtained leave of this Honorable Court, by an order dated December 26, 1934, in this cause, to file a separate suit in Equity against the petitioners and others to enforce the statutory liability of delinquent stockholders of The Peoples Banking Company of Smithsburg, Maryland, and that in pursuance thereof a suit No. 12,817 Equity in this Court was filed on January 28, 1935.

5.—Answering the fifth paragraph of said petition your respondent says, that the passage of the said order on June 19, 1933, by this Honorable Court was in the nature of an authority to your respondent to collect all assessments due on account of stockholders' liability and conferred upon him the further authority to enforce payment thereof by appropriate legal proceedings.

6.—Answering the sixth paragraph of said petition, your respondent in no way prejudiced or foreclosed any right that the petitioners had in the premises.

7.—Answering the seventh paragraph of said petition, your respondent admits the same.

8.—Answering the eighth paragraph of said petition, your respondent admits that the said order was passed on consideration of the petition and affidavit thereto, requesting the same, but your respondent denies that said order was passed prematurely and without proper and sufficient proof of the necessity for said order.

9.—Answering the ninth paragraph of said petition, your respondent denies the same.

10.—Answering the tenth paragraph of said petition, your respondent denies the same.

11.—Answering the eleventh paragraph of said petition, your respondent says, that while he admits that said order was passed without any allegation or proof that the petitioners held stock in The Peoples Banking Company of Smithsburg, Maryland, at the time or times when the various debts and liabilities of said The Peoples Banking Company of Smithsburg, Maryland, were proved against it, he denies that the passage of the order on June 19, 1933, in any manner prejudiced any rights, if any they had, of the petitioners in the premises.

12.—Answering the twelfth paragraph of said petition, your respondent says, that while he admits the allegations contained therein yet he denies that the passage of the order on June 19, 1933, in any manner prejudiced the rights, if any they had, of the petitioners in the premises.

13.—Answering the thirteenth paragraph of said petition, your respondent denies the same, and further says, that the matters therein set forth if available at all to the petitioners, can be used in their behalf in No. 12,817 Equity, now pending in this Court.

14.—Answering the fourteenth paragraph of said

petition, your respondent denies the same, and further says, that if the same are defenses to the payment of the petitioners' stock liability, that such matters are available in No. 12,817 Equity, now pending in this Court.

15.—Answering the fifteenth paragraph of said petition, your respondent denies the same.

16.—Answering the sixteenth paragraph of said petition, your respondent says, that he has no knowledge of what defenses the petitioners have to the suit filed against them and others, and can only state that the proper place to have said matters presented, would be in No. 12,817 Equity, now pending in this Court.

17.—Answering the seventeenth paragraph of said petition, your respondent says that he denies the same.

Therefore, having fully answered said petition, your respondent asks to be hence dismissed with his costs.

Respectfully submitted,

ELIAS B. HARTLE,

WILLIAM H. BOVEY,

Solicitors for John J. Ghingher, Receiver for The Peoples Banking Company of Smithsburg, Maryland

Filed March 6, 1935.

STIPULATION

STATE OF MARYLAND Vs. THE PEOPLES BANKING COMPANY OF SMITHSBURG, MARYLAND, A Body Corporate	NO. 12,277 EQUITY IN THE CIRCUIT COURT FOR WASHINGTON COUNTY IN EQUITY

STIPULATION

It is hereby stipulated and agreed that for the purposes of the hearing on the matter of the assessment against stockholders in the above named bank and for the determination of the Court thereon the facts herein shall be taken as duly proved by the evidence on behalf of the parties to this cause whose counsel appear as parties to this stipulation.

1.—That the times at which the various stockholders of the above named bank acquired their respective share or shares of its capital stock are correctly shown by the stock books of said company, which said stock books this Honorable Court shall take and consider as having been duly offered in evidence and proved.

2.—That at the time of the closing of the aforesaid bank the various stockholders who are petitioning this Court to strike out the assessment for double liability heretofore made against them had on deposit in said bank the various sums of money shown on the lists and schedules of deposits herewith filed which said deposits shall be taken as duly proved by competent evidence in this cause.

3.—That deposits which are now liabilities of said bank and were such at the time of its closing were made and its other liabilities incurred from time to time over a period of years, and that all of its said deposits were not made or its other liabilities incurred during the time that all of its stockholders of record at the time of its closing were such.

4.—That some of the shares of stock of said bank have been held and owned continuously by the same petitioner or petitioners from before June 1st, 1910, to the present time.

ELIAS B. HARTLE,
WILLIAM H. BOVEY,
Attorneys for Receiver.
JOHN WAGAMAN,
CHARLES F. WAGAMAN,
D. ANGLE WOLFINGER,
DANIEL W. DOUB,
Attorneys for Stockholder Petitioners.

Filed July 8, 1935.

Petitioners Exhibit list of Stockholders before June 1, 1910, under Paragraph No. 4 of Stipulation.

Stockholder	Certificate No.	No. Shares	Date Acquired
Barry M. Hartle	3	40	4-16-10
Charles C. Wolf	5	20	4-19-10
A. E. Sensenbaugh	14	5	4-16-10
Thos. F. Diffendal (dead)	17	20	4-16-10
Samuel W. Winters	19	40	4-16-10
Ardie W. Winters	20	10	4-16-10

G. Elmer Ridenour	26	20	4- 8-10
Norris O. Bachtell	31	30	4-21-10
Earl R. Bachtell	33	30	4-21-10
Barry G. Sheiss	41	10	4-29-10
Keller J. Beard	43	20	4-29-10
Jacob W. Warrenfeltz	46	30	4-30-10
George R. Garnand	47	70	4-30-10

Petitioning stockholders with amounts of deposit of those having funds deposited with The Peoples Banking Company of Smithsburg.

	deposits		
	Checking	Savings	Xmas
Daniel E. Bachtell	$ 257.36	$	$
Earl R. Bachtell	10.09	2,095.16	
Elizabeth K. Bachtell			
Norris O. Bachtell	1.86	1,840.04	
Robert L. Barkdoll	5.35		
Louise F. Barlow			
Keller J. Beard			
Preston H. Beard		2,100.00	
Lorena N. Betts	110.85	348.83	
Phillip M. Bikle			
Samuel B. Bowman	132.81	510.64	
Samuel B. Bowman		1,239.08	
Samuel B. Bowman		4,217.06	
J. Arley Brown	5.89		
Grover A. Buhrman		526.13	
Victor P. Buhrman			
C. L. Burgesser	304.66		
Emma E. Burgesser			15.50
Emma E. Burgesser			9.92
Frank E. Bushey	.29		
Julia Newman Chandlee			
J. G. Dayhoff	177.19	5,100.00	
Anna C. Delauter		237.30	
J. Wm. Detrow			
Virgie C. Detrow			
Robert L. Dickey			
Howard J. Fehl	237.51		
Howard J. Fehl	355.42		
N. Pearl Fiery			
Catherine A. Foltz			
Annie M. Frey		1,047.09	
Jos. M. Frey			
Robert L. Funk	.55	25.31	8.70
Edgar F. Gardenhour	.13		
Ella C. Gardenhour		1,175.25	
G. Wm. Gardenhour	5.07	38.11	

Jos. O. Gardenhour	.02		
Raymond K. Gardenhour	7.00		
George R. Garnand	21.78	4,000.00	
Anna M. Harbaugh	17.92	70.00	47.50
Edward A. Harp			
Luhn E. Harp			
Lula E. Harp	93.94		
Mary E. Harp	50.41		
Barry M. Hartle	400.00	25.62	
Stanley E. Hauver			
James E. Hessong		5,850.65	
Sadie E. Hessong		1,815.63	
Mabel N. Hoffman	38.25	380.72	
George B. Hoover			
Roberta L. Hoover			
John B. Houser		306.00	
Lancelot Jacques, Jr.			
Margaret N. Jacques			
Emory Kelbaugh	263.64	727.93	
Irving A. Kelbaugh	11.49	7,524.80	
Myrtle E. Kohler		1.60	
George A. Kohler			
Frank H. Kretsinger	1,193.92		
J. Rodney Kretsinger		76.85	
Ernset Kuhn		1,176.11	
C. M. Leiter	96.10		
J. Oram Leiter			
Lewis A. Longanecker		599.76	
Samuel Lowman		4,755.19	
John A. Martin	340.68	93.93	
Lydia M. Martin	91.70	3,895.69	
Martha Moser			
Samuel H. Murray	301.71		
Edna L. Newcomer	2.24	45.83	
David H. Newman, Jr.			
Howard P. Newman			
Mrs. Hoy D. Newman			
I. M. Newman	64.27		
Anna F. Oller		494.89	
Betty Jane Oller		5.10	
Elmer H. Oller)	79.09		
Susanna Oller)		50.00	
Allen H. Oswald	4.60	2,649.42	
Irene Oswald			
Franklin B. Reynolds			
Mary V. Reynolds	46.01	1,587.61	
Mary V. Reynolds		223.41	19.00
Carrie Ridenour		29.58	

Cora Ridenour		263.36
Elmer T. Ridenour	83.61	728.28
Beulah Ridenour		312.98
Laura Ridenour		43.81
Mrs. Clara B. Ridge)	23.61	
George W. Ridge)		286.33
Chas. H. Rinehart		
Clayton L. Roher		
Edith Ingram Rohrer		
B. F. Shank (Frances E. Schaller, Admx.)		923.60
Rachel S. Schwartz		
Talbott B. Smith		
Nancy M. Schmick		
A. E. Sensenbaugh		214.22
B. O. Shank (Barbara Shank, Admx.)		
Mary C. Shank	4.71	3,464.94
Barry G. Sheiss		568.69
Alfred Smith	133.33	5,405.59
Allen C. Smith		
Keiffer Smith		
Benjamin F. Snyder	5.28	
Bessie G. Snyder		
Gehr L. Snyder		145.48
E. A. Spessard	38.47	103.28
Anna B. Stem		
Emma K. Stockslager	33.24	
John F. Stockslager	1.24	1,900.41
Isobel O. Stottlemyer		
Mary V. Toms		
U. S. Toms	9.51	3,023.54
Mary B. Towson		
Robert F. Towson		
John E. Waltz		4,367.52
J. H. Warrenfeltz		748.66
Josiah A. Warrenfeltz		
J. W. Warrenfeltz		
Ardie W. Winters	.29	
Keturah Winters		10,659.46
Sherdie E. Winters		846.08
Rev. Clarence E. Wolfe		
Harry E. Wolfe		
Walter A. Wolfe		
Louisa J. Wolfe		
Chas. C. Wolfe	219.05	5,538.90
Ira L. Wolf		
Charles I. Wolfinger		
Edith H. Wolfinger		

D. Angle Wolfinger	
Mrs. Jason P. Snively	
Richard A. Snively	
Theodore A. Diffendahl	10.57
J. E. Wagaman, Trustee of	
Thomas F. Diffendahl	11,679.18

EVIDENCE

STATE OF MARYLAND Vs. PEOPLES BANKING COMPANY OF SMITHSBURG, MARYLAND	NO. 12,277 EQUITY IN THE CIRCUIT COURT FOR WASHINGTON COUNTY IN EQUITY

That without resort to the liabilities of stockholders the total assets of said Bank will be insufficient to pay its liabilities to the extent of at least $40,000.00 and that unless recovery is made from stockholders of this Bank, complete liquidation of its assets will leave more than $40,000.00 of its debts unsatisfied.

That subsequent to the passage of the order of assessment on June 19, 1933, the receiver upon several occasions mailed notices to the record stockholders of said bank notifying them of said assessment and calling upon them to pay the same.

That pursuant to an order of Court passed December 26, 1934, the receiver filed suit against delinquent stockholders on the 28th day of December, 1934, in No. 12,817 Equity in the Circuit Court for Washington County, Maryland.

That the last dividend was declared by said Bank about January 1, 1931, and the petitioning stockholders who were such on said date received and accepted the same.

EXHIBIT

CERTIFICATE OF INCORPORATION OF THE PEOPLES BANKING COMPANY OF SMITHSBURG, MARYLAND

(copy)

This is to certify, That the subscribers, Lancelot Jacques of Smithsburg, Maryland, Jos. H. Sleasman, of Smithsburg, Maryland, Leslie C. Marsten, of Smithsburg, Maryland, David J. Reecher, of Smithsburg, Mary-

land, George B. Hoover, of Smithsburg, Maryland, Boaz Gardenhour, of Smithsburg, Maryland, Geo. R. Garnand, Smithsburg, Maryland, Allen C. Smith, of Smithsburg, Maryland, Barry M. Hartle, Chewsville, Maryland, Henry C. Wolf, Chewsville, Maryland, Keller J. Beard, Smithsburg, Maryland, F. H. Bikle, Smithsburg, Maryland, James G. Dayhoff, Smithsburg, Maryland, George F. Diffendall, Smithsburg, Maryland, and George M. Bushey, Cavetown, Maryland, and all being of full legal age, and all of whom are citizens of the State of Maryland, do hereby associate themselves with the intention of forming a corporation for the purpose of conducting a Savings Bank and to enjoy the powers and immunities of a corporation or body politic, under and in pursuance of the General Laws of the State of Maryland, authorizing the formation of such corporation, do hereby enter into and adopt the following as their certificate of incorporation.

Article 1.—The Corporate name of the corporation shall be The Peoples Banking Company of Smithsburg, Maryland.

Article 2.—The object and purpose for which incorporation is sought is to have and maintain a Savings Institution, authorized and empowered to borrow money, receive money on deposit and pay interest thereon, to loan money or to discount in accordance with bank usage taking such security therefor, either real or personal, as the Board of Directors of said corporation may deem sufficient; to buy and sell bills of exchange, notes, bonds or other securities; to make such special regulations in reference to special or other deposit as the Board of Directors may think advisable; to declare such dividends to the general depositors and the payment of such interest to special depositors as said Directors may, from time to time, deem expedient, and in general to transact such business as is set out by the terms and conditions in these Articles of Incorporation and in the by-laws of said corporation which may be hereafter adopted, subject to all the conditions, provisions, relations and powers contained in the Public General Laws of Maryland, applicable to a corporation of this charter or the amendments thereto which may hereinafter be enacted.

Article 3.—The principal office of said Corporation in this State will be located at Smithsburg, Washington County, Maryland.

Article 4.—The total amount of capital stock of this

corporation so formed shall be Twenty Thousand Dollars ($20,000.00) and that the said capital stock is divided into 2,000 shares of the par value of Ten Dollars ($10.00) each.

Article 5.—The concerns of said Corporation shall be managed by a Board of Directors composed of fifteen members, and that Lancelot Jacques, Joseph H. Sleasman, Leslie C. Marsten, David J. Reecher, Geo. B. Hoover, Boaz Gardenhour, Geo. R. Garnand, Allen C. Smith, Keller J. Beard, Ferdinand H. Bikle, James G. Dayhoff, and George F. Diffendall, all of Smithsburg, Maryland, Geo. M. Bushey of Cavetown, Maryland and Barry M. Hartle and Henry C. Wolf, of Chewsville, Maryland, all of whom are citizens of the State of Maryland, and actually reside therein shall act as such Directors for the first year or until their successors are duly chosen and qualified, and that such corporation may, at any annual election — the number of its Directors to any number not greater than eighteen.

In testimony whereof, we have hereunto set our hands and affixed our seals this 22nd day of January, A. D., 1910.

ALLEN C. SMITH	(SEAL)
BARRY M. HARTLE	(SEAL)
HENRY C. WOLF	(SEAL)
KELLER J. BEARD	(SEAL)
F. H. BIKLE	(SEAL)
JAS. G. DAYHOFF	(SEAL)
GEO. F. DIFFENDALL	(SEAL)
LANCELOT JACQUES	(SEAL)
JOS. H. SLEASMAN	(SEAL)
LESLIE C. MARSTEN	(SEAL)
DAVID J. REECHER	(SEAL)
GEORGE B. HOOVER	(SEAL)
BOAZ GARDENHOUR	(SEAL)
GEO. R. GARNAND	(SEAL)
G. M. BUSHEY	(SEAL)

Test: J. H. Ferguson

STATE OF MARYLAND,

WASHINGTON COUNTY, to wit:

I hereby certify that on this 22nd day of January, A. D. 1910, before me, the subscriber, a Justice of the Peace of the State of Maryland, in and for Washington County, personally appeared Lancelot Jacques, Joseph H. Sleasman, Leslie C. Marsten, Daniel J. Reecher, Geo. B. Hoover, Boaz Gardenhour, Geo. R. Garnand, Allen

C. Smith, Barry M. Hartle, Henry C. Wolf, Keller J. Beard, F. H. Bikle, James G. Dayhoff, Geo. F. Diffendall and Geo. M. Bushey; all residents of the State of Maryland, and did each on their respective part acknowledge the above and aforegoing certificate of incorporation to be their respective act.

J. H. Ferguson, J. P.

STATE OF MARYLAND,

WASHINGTON COUNTY, to wit:

I, Edward Oswald, Clerk of the Circuit Court for Washington County, do hereby certify that J. H. Ferguson, Esquire, before whom the above and annexed acknowledgments were made, and who hath thereunto subscribed his name was at the time of so doing, a Justice of the Peace of the State of Maryland, in and for Washington County, duly appointed, commissioned and sworn, and authorized by law to administer oaths and take acknowledgments. I further certify that I am acquainted with the hand-writing of the said Justice and verily believe the signature thereto is his genuine signature.

In testimony whereof I hereunto subscribe my name and affix the seal of the Circuit Court for Washington County aforesaid, at Hagerstown, this 24th day of January, A. D. 1910.

(COURT SEAL) EDWARD OSWALD, Clerk.

I, Martin L. Keedy, one of the Judges of the Fourth Judicial Circuit of the State of Maryland, in which is located the town of Smithsburg, in the County of Washington, do hereby certify that the above and aforegoing certificate of incorporation has been submitted to me for examination and I do further certify that said certificate is executed in conformity with the law.

January 24th, 1910. M. L. KEEDY.

STATE OF MARYLAND,

WASHINGTON COUNTY, to wit:

I hereby certify that the aforegoing is a true copy taken from Liber No. 2, folio 137, one of the Charter Records for Washington County, the same having been recorded February 3, 1910.

In testimony whereof I hereunto subscribe my hand and affix the seal of the Circuit Court for Washington

County at Hagerstown, this 26th day of May, A. D. 1933.

(SEAL)

EDWARD OSWALD,
Clerk of the Circuit Court for Washington County, Maryland.

Filed June 19, 1933.

EXHIBIT

CERTIFIED COPY OF AMENDMENT TO CHARTER OF THE PEOPLES BANKING COMPANY OF SMITHSBURG, MARYLAND

ARTICLES OF AMENDMENT TO THE ARTICLES OF INCORPORATION OF THE PEOPLES BANKING COMPANY

THIS IS TO CERTIFY That at a meeting of the Board of Directors of The Peoples Banking Company of Smithsburg, Md., held on the 24th day of Dec., 1921, at which more than a majority of the said Board was present, a motion was duly made, seconded and unanimously carried, that the Board of Directors of The Peoples Banking Co. of Smithsburg, Md., recommend to the stockholders of the Corporation that the capital stock of the Corporation be increased from Twenty thousand ($20,000.00) Dollars to Forty Thousand, and that the certificate of incorporation of the Corporation be amended to effect that result, and that a special meeting of the stockholders of the Corporation be called for the purpose of considering such recommendation of the Board, and taking such action thereon as may be deemed proper in the premises.

That pursuant to a notice of a special meeting of the stockholders, sent to all of the stockholders of the Corporation in pursuance of the aforementioned action of the Board of Directors, and setting forth the object of the meeting, as well as the time and place thereof, and giving the period of notice required by law in the premises, a meeting of the stockholders of The Peoples Banking Company of Smithsburg, Md., was duly held on the 7th day of Jan., 1922, at which the holders of more than two-thirds of the stock of the Corporation outstanding and entitled to vote were present; that at said meeting the aforementioned recommendation of the Board of Directors was duly read to the stockholders, and by them considered; that thereupon, upon motion duly made, seconded and unanimously carried, it

was resolved that the section of the Articles of Incorporation of The Peoples Banking Co., as follows:

"Section The total amount of the capital stock of said Bank is $20,000.00 divided into 2,000 of the par value of ($10.00) Dollars each" be and the same is hereby changed to read as follows:

"Section The total amount of the capital stock of said Bank is $40,000.00 divided into 4,000 of the par value of $10.00 Dollars each."

The price to be paid for the new stock is ($25.00) Dollars per share that at said meeting of stockholders of The Peoples Banking Co. it was further resolved that a certificate be executed by the proper officers of the corporation, as is hereby done, setting forth the said Amendment of the Articles of Incorporation of the Corporation, and that such further action to be taken in the premises by the proper officers of the Corporation as may be requisite to render the said Amendment effectual.

In witness whereof The President and Cashier of The Peoples Banking Co., have hereunto affixed their signatures this 9th day of Jan., 1922, and certify that the foregoing resolutions were passed as above set forth and the said President and Cashier have further acknowledged this Certificate of Amendment for and on behalf of the said Corporation.

LANCELOT JACQUES, SR.,
President of The Peoples Banking Co. of Smithsburg, Maryland.

(CORP. SEAL)

P. O. COX,
Cashier of The Peoples Banking Co., Smithsburg, Maryland.

STATE OF MARYLAND,

COUNTY OF WASHINGTON, SS:

I hereby certify that on this 9th day of Jan., 1922, before me the subscriber, a Notary Public of the State of Maryland, in and for Washington County, personally appeared Lancelot Jacques, Sr., President of The Peoples Banking Co., and P. O. Cox, Cashier of the said Bank, and on behalf of The Peoples Banking Co., each acknowledged the foregoing Certificate of Amendment as the act and deed of said Corporation.

Witness my hand and notarial seal.

(N. P. SEAL) Keller J. Beard, Notary Public.

CERTIFICATE OF APPROVAL OF BANK COMMISSIONER

I do hereby approve the aforegoing Certificate of Amendment to the Articles of Incorporation of The Peoples Banking Co.,

As witness my hand this tenth day of January, 1922.

George W. Page,
Bank Commissioner of the State of Maryland

I, Frank G. Wagaman, one of the Judges of the Circuit Court of Washington County, do hereby certify that the foregoing certificate has been submitted to me for examination and I do further certify that the said certificate is executed in conformity with the law.

Jany. 13, 1922 Frank G. Wagaman, Judge.

STATE OF MARYLAND,

WASHINGTON COUNTY, to wit:

I hereby certify that the aforegoing is a true copy taken from Liber No. 3, folio 30, one of the Charter Records of Washington County, the same having been recorded Jany. 13, 1922.

In testimony whereof I hereunto subscribe my hand and affix the seal of the Circuit Court for Washington County at Hagerstown, this 15th day of June, A. D. 1933.

(SEAL) Edward Oswald,
Clerk of the Circuit Court for Wash. Co., Md.

Filed June 19, 1933.

OPINION

STATE OF MARYLAND Vs. THE PEOPLES BANKING COMPANY OF SMITHSBURG	NO. 12,277 EQUITY IN THE CIRCUIT COURT FOR WASHINGTON COUNTY

On the 5th day of April, 1933, the Bank Commissioner was appointed Receiver of The Peoples Banking Company of Smithsburg, hereinafter called Bank, and its affairs are now in the hands of the said commissioner for the purpose of liquidation.

On June 19, 1933, this Court passed an order and decree requiring "each stockholder of The Peoples Banking Company of Smithsburg, Maryland, to pay

to John J. Ghingher, Bank Commissioner, Receiver for the said "Bank" an amount of money equal to the par value of the share or shares of the capital stock of the said "Bank" held by him, and further ordering and authorizing the Bank Commissioner to proceed by law with the collection of the assessment so made.

On Feb. 15, 1935, a large number of persons who were stockholders of the Bank at the time of the appointment of a Receiver filed their petition praying that they be made parties defendant in the said proceedings. The prayer of this petition was granted. On the same day these new parties defendant filed their petition praying that the said order of June 19, 1933, be rescinded and revoked. The allegations of this petition and the answer of the Bank Commissioner thereto, raise the question of the constitutionality of Sec. 72 of Art. 11 of the Annotated Code, and if it be held constitutional, its proper construction and effect.

The more material facts appearing from the testimony and stipulation filed in the case are as follows:

The Bank was incorporated under the general provisions of the law on the 24th day of February, 1910. Many of the petitioners were creditors of the Bank at the time of the appointment of the Receiver, as well as stockholders. Thirteen of these stockholders were such prior to June 1, 1910, the effective date of the Act of Assembly now appearing in the Code as above stated.

The liability of a stockholder of a corporation to be called upon to pay the debts of the corporation is a liability founded upon contract.

Norris vs. Wrenschall 34 Md. 499.
Brant vs. Echlen, 59 Md. 351
Coulbourn vs. Boulton 100 Md. 351.
Steel Co. vs. Equitable Soc. 113 Md. 80.
Colton vs. Mayer 90 Md. 711.
Republic Iron & Steel Co. vs. Carlton
189 Fed. 130.

In Norris vs. Wrenschall, supra, page 500, it is said in an opinion by Judge Miller, that the stockholder's liability "is not in the nature of a penalty, like that in other sections, imposed upon the trustees, managers, directors or other officers of the corporation, for doing that which the statute expressly or by implication forbids, or omission to do something which the law directs to be done § § it is § § virtually and in effect a liability

upon a contract and the mutual agreement of the parties, not indeed in form an expressed personal contract, but an agreement of equally binding obligation consequent upon, and resulting from, the acts and admissions or implied assent of the parties". Or, as said by Judge Rose in Republic Iron & Steel Co. vs. Carlton, supra, "In Maryland the liability of a stockholder to a creditor of a corporation is one founded on contract §§ it follows that the plaintiff has a right to insist that the obligation of that contract shall not be impaired by subsequent legislation, nor may the State so change the remedy as substantially to impair or lessen the value of the contract".

Since the right of a creditor and the liability of a stockholder is founded on contract, and the contract is a creature either of the Constitution of the State or the valid statutes passed by the Legislature in pursuance of and in accordance with the Legislature's constitutional powers, it is necessary to examine first the constitutional provisions.

Sec. 39 of Art. 3 of the Constitution is as follows:

"The General Assembly shall grant no charter for Banking purposes, nor renew any Banking Corporation now in existence, except upon the condition that the Stockholders shall be liable to the amount of their respective share or shares of stock in such Banking Institution, for all its debts and liabilities upon note, bill or otherwise: the books, papers and accounts of all Banks shall be open to inspection under such regulations as may be prescribed by law".

Since the adoption of the Constitution of 1867, there have been but two general statutes dealing with the subject matter of Art. 3 Sec. 39. The first was Sec. 11 of Chap. 206 of the Acts of 1870, appearing in the Code of 1888 as Sec. 27 of Art. 11. The second was Sec. 68 of Chap. 219 of the Acts of 1910, appearing in the present Code as Sec. 72 of Art. 11.

The Act of 1870, Chap. 206, Sec. 11, is as follows:

"The continuance of the said several corporations shall be on the condition that the stockholders and directors of each of said corporations shall be liable to the amount of their respective share or shares of stock in such corporation, for all its debts and liabilities upon note, bill or otherwise; and upon this further condition, that this article and every part of it may be al-

tered from time to time, or repealed, by the Legislature."

This Act is in the identical language of Sec. 39 of Art. 3 of the Constitution, except that it includes the directors as well as the stockholders.

Chapter 338 of the Acts of 1852 authorized the formation of corporations for manufacturing purposes. Sec. 9 of that Act provided, "That all stockholders of every company incorporated under this Act shall be severally and individually liable to the creditors of the Company in which they are stockholders, to an amount equal to the amount of stock held by them respectively, for all debts and contracts made by such company", until the whole amount of capital stock is paid in. In Matthews vs. Albert, 24 Md. 527, the creditor of a manufacturing company sought to recover from a stockholder the double liability under the section quoted. It was held that the stockholder was liable for the debt of the corporation while he was a stockholder, but was not liable to a creditor who became such after his stock had been transferred. This case was decided in 1866.

In Norris vs. Wrenschall, 34 Md. 492, a creditor of a manufacturing corporation sought to recover against a stockholder the double liability under Sec. 52 of Art. 26 of the Code of 1860, being the same statutory provision under consideration in the last mentioned case. The Court said: "We have also there (Norris vs. Johnson, ante, page 485) determined that the extent of the liability of each stockholder is measured by the amount of stock held by him at the time the debt was contracted, continues at least until all the capital stock is paid in, and is in no wise affected by the amount thereof that may at any time remain unpaid. There is no provision in the Code by which this liability is made dependent upon any other contingency than the contracting of the debts by the corporation, whilst the defendant was a stockholder, and before the capital stock is fully paid up. These two conditions make the liability determinate and irrevocable."

Hager vs. Cleveland, 36 Md. 476, was the same character of case as the one last mentioned. The Court says: "This brings us to the second ground of defence; whether the transfer of stock by the appellant, exonerates him from personal liability for a debt contracted when he was a stockholder and before the whole capital stock was paid in".

"The language of Sec. 52, it must be admitted, is

general in its terms, and does not in words declare whether the individual liability shall attach to such as are stockholders at the time the debt is contracted, or to those holding stock at the time the suit was brought. It is obvious, however, that the protection of the creditor was the paramount object the Legislature had in view, and the section in question, ought to receive such a construction as will best accomplish this object." The Court later quoting from Norris vs. Wrenschall, supra, says: "It is a debt under the statute due from the stockholder to the creditor, springing out of and co-existent with the contract between the corporation and the creditor," (Colton vs. Mayer 90 Md. 717), and then says: "If so, if it be a debt due from the stockholder to the creditor coexistent with the contract by the company, it is clear that no act by the stockholder without the consent of the creditor can exonerate him from the liability thus incurred. The relation of stockholder creates a perfect legal obligation to pay the debts contracted by the company, and it is upon the faith of this perfect legal obligation that parties deal with the company. The liability of the stockholder, being therefore, in the nature of a contract made between the company, the creditor and himself, we are of opinion that it continues and **is in no manner affected by the mere transfer of his stock.** (Bold face ours). This construction is fully warranted by the language of the statute and best accomplishes the purpose of the Legislature, namely, the protection and security of creditors."

In Weber vs. Fickey, 47 Md. 196, the Court was construing the liability of a stockholder under Sec. 59 of Chap. 325 of the Acts of 1872, the statute being similar to the one in the aforegoing cases. In passing upon a demurrer to the declaration in a suit at law the Court says: "Another defect in the declaration is the omission to allege that the defendant was a stockholder at the time the debt sued for was contracted. It is not sufficient that he should have become one afterwards or was so, at some time prior to the date of the credit given, he must have been a stockholder at the time, Hager vs. Cleveland, 36 Md. 476, and this is as essential to the right of recovery against him as the fact that there is an amount of his subscription still unpaid. It is as necessary to aver the one as the other, and the omission of either averment from the declaration is a fatal defect."

In Hammond vs. Straus, 53 Md. the Court had under consideration the liability of a stockholder of a

banking corporation to a creditor of the bank. The provisions of the charter of the bank with respect to this liability are contained in Sec. 14 of Chap. 118 of the Acts of 1874, and are identical in language with the constitutional provisions heretofore referred to, with the addition of "directors" to "stockholders", and with the Act of 1870, Chapter 206, Section 11, heretofore referred to. The Court announced, "To entitle the plaintiff (creditor) to recover in this action it was essential that three things should be made to appear: 1. That a corporation, such as that alleged should have been created; 2. That the defendant was a stockholder therein; and 3. That the plaintiff was a creditor of the corporation and that he became such while the defendant was a stockholder and Judge Boyd said in Murphy vs. Wheatley, 102 Md. 501, 517,

"If depositors and other creditors become such before stockholders occupying that relation to the company they cannot say that they relied on those persons for additional security, or had any right to look to them, for they were not then, and might never become stockholders. But under the rule adopted by this Court, they can if they choose ascertain who the stockholders are when the debts are contracted."

In Colton vs. Mayer, 90 Md. 711, the Court considered the rights of creditors and the liabilities of stockholders under the provisions contained in the Charter of the South Baltimore Bank. This suit was by receivers against a stockholder. The charter fixed the rights of the creditor and the obligations of the stockholder in the identical language of the constitution, except that it added "directors", to the stockholders. The Court reaffirmed Hammond vs. Straus, supra, and went on to say: "In as much as this charter does not authorize the receivers to sue, the test of their right to do so is to ascertain whether it gave the corporation any property or estate in this liability of the stockholders, or in any manner made it an asset of the bank, for, unless it did, it is clear that they cannot maintain this suit against the defendant on the mere ground that he was a stockholder. When the charter says, that the stockholders and directors of this corporation shall be liable to the amount of their respective shares of stock 'for all of its debts and liabilities' to whom were they to be so liable? Clearly not to the corporation for its own debts and liabilities, but manifestly they were to be liable to the creditors". And the Court further says: "There was no liability of any kind to the corporation,

by reason of this provision in the charter, and at no time from its organization to its dissolution could it have demanded one penny from the appellee on account of it."

Murphy vs. Wheatley, 102 Md. 501, was a suit to enforce the triple liability of stockholders in a trust company under Section 85L of Article 23 of the Code, Act of 1892, Chapter 109, and it was there held that a stockholder was not liable to a creditor who became such before the ownership of the stock, a liability denied by the Circuit Court. In that case the opinion by Judge Boyd says: "We are aware that many courts—perhaps a majority of those in this Country—have held to the contrary, but the decisions of this Court unquestionably sustain that answer of the lower Court. It is to be regretted if this construction of the statute will cause such difficulties as are suggested by the appellants (of accounting, collection and apportionment), but even such results would be preferable to the risk of doing manifest injustice to those who become stockholders during the closing days of this company." And on page 518, it is said, "The liability, in this respect, is well settled in the State in the earlier cases. They held that the extent of the liability was measured by the amount of stock held by the stockholders **at the times the debts were contracted,** and stockholders were not liable for debts contracted **before** they became such." If this is not the law now, then the stockholders' liability is a penalty and is not contractual. To hold that this liability is a penalty for owning stock the day a bank closes would be not only to overrule the decisions, but to repudiate the interpretation given the constitutional provision (Art. 3, Sec. 39) by Judge Alvey in Hammond vs. Straus, 53 Md. 1 and by Judge Boyd in Colton vs. Mayer, 90 Md. 711.

The cases from which we have quoted, and to which we have referred, firmly establish the principle upon which stockholders are held liable to creditors in Maryland. Some of these cases have considered statutes wherein the language was similar to the language of the Constitution. Others have considered language identical with the language of the Constitution. One of them was decided before the adoption of the Constitution. None of these cases has ever been overruled, nor its authority questioned. From them we think it clearly decided that Sec. 39 of Art. 3 of the Constitution requires the Legislature to give to creditors of Banks, and to impose upon stockholders of banks, the

following rights and obligations respectively. First: To give to creditors and impose upon stockholders direct and immediate responsibility to be enforced between themselves. Second: To give the creditor the right to pursue a stockholder, and to place upon the stockholder a liability, for the debts of the bank incurred while the stockholder was such. Third: The right of the creditor and the responsibility of the stockholder to continue, notwithstanding the stockholder transfers his stock. And fourth: The liability of the stockholder to be an asset of the creditor and not an asset of the corporation. It does not require the Legislature to impose liability on a stockholder for any debts except those attaching while the stockholder is such.

These rights of creditors against stockholders, which the Constitution requires the Legislature to give them, are property. If these rights are property it is not within the power of the Legislature to take them away. As stated in Mister vs. Thomas, 122 Md. 445-457, "It is not, therefore, within the power of the Legislature to have exempted the stockholders of such a corporation from the obligations imposed by Section 39 of Art. 3 of the Constitution." This liability, in order to be unassailable, must be a property right, and if so available to creditors against stockholders who were such when the debt was created. If this is not true then the only alternative is to declare it to be a penalty. If a penalty the stockholder, if he sees a bank's failure ahead may rid himself of stock in any way he chooses, no matter what his motive may be, and he can thus free himself of liability. If the transfer be in fraud of any one's right, it must be a property right. There can be no fraud in ridding onesself of a penalty.

It is in the light of these principles, and in that light alone, that we are bound to approach the consideration of Section 72 of Article 11 of the Code.

There is no prohibition in the Constitution against giving creditors of banks rights or imposing upon stockholders obligations greater than required by the Constitution. Murphy vs. Wheatley, supra. But, when we come to consider the only other Act relating to the rights of creditors against stockholders of banks, to wit, Section 72 of Article 11 of the Code, we are bound to assume the Legislature intended to obey the Constitutional Mandate to it; for it would ill become the Court to charge a coordinate branch of the State Government with a wilful disobedience of the will of the

people as expressed in the fundamental law. If, therefore, Section 72 of Article 11 of the Code is found to give to creditors the rights, and to impose upon stockholders the liabilities required by the Constitution, it will be no objection to find that it gives greater rights to creditors and imposes greater liabilities upon stockholders. However, if the Section of the Code under consideration is found to give only one right to creditors and impose one liability upon stockholders, then, if by any reasonably possible construction the Act can be held to comply with the Constitutional Mandate, it must be so held. And if the section in question is found to undertake to deny creditors the rights guaranteed to them by the Constitution, it must be held to contravene Section 10 of Article 1 of the Federal Constitution, as well as the Fourteenth Amendment thereto, and in addition thereto the 23rd Article of our own Bill of Rights. Md. Jockey Club vs. State 106 Md. 413—Hawthorne vs. Calef 2 Wall 10-21.

Section 72 of Article 11 of the Code purports to provide but one fund for the benefit of creditors of banks. It purports to impose but one obligation upon stockholders. We think its provisions can reasonably be construed as complying with the provisions of the Constitution. Any other construction would mean that every State bank organized under the general law would be unlawfully operating because of the absence of the requirement of Article 3, Section 39 of the Constitution. That provision must be fastened on every bank chartered by this State.

The Constitution provides that stockholders shall be liable for "all debts, etc." The Act of 1870 used the same language. The charter in Hammond vs. Straus, supra, repeated it. The statute in Murphy vs. Wheatley, supra, also repeated it. The Charter in Colton vs. Mayer, supra, did likewise. These cases determined that the liability for "all debts, etc." meant debts attaching at the time the stockholders were such irrespective of any subsequent transfer of the stock. When, therefore, the Legislature in 1910 in the section under consideration again repeated the identical language "all debts, etc." which had been given a very definite meaning by the cases referred to, it must be held to have intended the meaning already given it, unless a different meaning is forced by a different context. There is nothing in the Section of the Code under consideration that compels a different interpretation of the language. The "debts" to be benefited by the liability imposed under

all the cases were not the debts which might be owing upon the insolvency of the bank. As to each stockholder they were the "debts" attaching during the time he was such.

The "stockholders" to be liable were designated in the charters in the cases cited, as well as in the constitutional provision, by the same language as they are designated in Section 72 of Article 11. The Legislature therefore must have meant the same class of individuals as was determined to be included within that description in the language used in the cases. And "stockholders" as defined in the section must therefore be held to be the stockholders at the time of the creation of the debt for which the liability is sought to be enforced, irrespective of the transfer of their stock.

Not only is there no indication in this section that it was intended to make liable only stockholders of record at the time of the insolvency of the bank, but it affirmatively appears by the repetition of the language already interpreted as intended not to do so.

Beginning with the Act of 1892, Chapter 109, there are many statutes fixing the liabilities of stockholders of trust, guaranty and other corporations, as to which the Constitution contains no provision. In every one of those Acts the rights of preexisting creditors are reserved. Likewise in Section 72 of Article 11, the preexisting rights of creditors of trust companies are reserved. As to creditors of banks there is no such reservation. As to banks the only previous statute was the Act of 1870, which, as has been said, was in the language of the Constitution. From this failure in the Act of 1910 to reserve the preexisting rights of creditors of banks, the only logical conclusion is that the Legislature did not, by that statute, intend to make any change in those rights; but intended only to provide a different procedure for their enforcement. This view further confirms us in our conclusion that the rights of creditors of banks under the Act of 1910 are identical with those rights under the Act of 1870, and that the Act of 1910 was intended by the Legislature to be construed exactly as was the Act of 1870, except so far as the Act of 1910 provides a different method of procedure.

Section 72 of Article 11 of the Code provides that the liability of stockholders shall be an "asset of the corporation". If by that language it is meant that this liability is for the benefit of all the creditors of the cor-

poration, irrespective of the views we have heretofore expressed, then, in our view, it would be in violation of the Constitutional rights of creditors of the bank. If, on the other hand, it is held to mean that the liability of the stockholder is an asset of the corporation to be distributed by it or its receiver to the creditors according to their rights as heretofore defined, and we so construe it, then it merely provides for a more equitable distribution of the liability imposed for the benefit of creditors, and prevents multiplicity of suits among stockholders for contribution. This construction does no violence to the rights of creditors and the statute thus construed is not rendered inconsistent with our State or Federal Constitutions.

Miners & Merchants Bank vs. Snyder 100 Md. 57

Mister vs. Thomas, 122 Md. was decided after the Act of 1910, but the receivers who brought the suit were appointed in 1907. The Farmers Trust, Banking and Deposit Co. for whom the receivers were appointed, were subject to the provisions of the Act of 1904, which was an amendment to Chapters 192 and 270 of Act of 1892, by which the stockholders were bound by Section 11 of the Charter. The order of the lower Court directed the receivers to bring suit against stockholders "who would in any way be liable for the debt of the said company". There was nothing in this order limiting the liability to stockholders of record of the day of the receivership, from which it might be inferred that the Chancellor contemplated the possible liability of former stockholders. Nor did the Court of Appeals in the opinion by Judge Burke in terms say it was an asset of the corporation. What he did say (p 458) was, that it was "to be treated as an asset of the corporation and enforced by the receivers under the order of that Court". The views we have herein before stated are therefore in no way inconsistent with this case.

We have hereinbefore stated that the liability of a stockholder of a bank is an "asset of the corporation" only in the sense that it may be collected by the receiver for the benefit of those creditors who became such while the stockholders against whom the liability is enforced, were such. In so determining we found that Section 72 of Article 11 of the Code, was intended to be a performance by the Legislature of the Constitutional Mandate and no more. It follows as a necessary result that stockholders who are also creditors are equitably entitled to set-off the debt of the bank to

them against the stockholders' liability. Such a ruling is necessary to sustain the constitutionality of the statute, and is a reasonable construction of it.

In Cahill vs. Original Big Gun Asso. 94 Md. 353, the Court allowed the set-off because the charter considered in that case required it. The pertinent provisions of the charter are in the identical language of the Constitution except that "directors" is added to stockholders against which liability is imposed. The Charter considered is the one, the effect of which was construed in Colton vs. Mayer, supra. Strauss vs. Denny, 95 Md. 690 reaffrmed this decision.

In the discussion of this case we are not unmindful of two recent cases in the Court of Appeals holding stockholders liable to assessment, but neither of them says what stockholders are liable, nor for the benefit of what creditors was there such liability. Those cases were heard and decided on the theory of liability, and the constitutional provision was not under attack.

In the case of Lange vs. Ghingher, 168 Md.—178A 116, the question presented and decided was whether the stockholders of the American Trust Company were relieved of their statutory liability because of an agreement whereby management of the bank had been taken over by another bank, with other banks agreeing to share in any shortage in the liquidation of the insolvent bank.

In the case of Robinson vs. Hospelhorn, 168 Md.—, Daily Record June 27, 1935, the decision was that the stockholders' liability was primary, and that the assessment of the stockholders' liability did not need to await the liquidation of the bank's assets and that the assessment was not required to be delayed until the liquidation of the bank's assets by a liquidating corporation to which the assets of the bank had been transferred under an assignment by which it had until July 1, 1938 to convert such assets. These were the only questions submitted, argued and decided in that case. The questions submitted were so limited by the following stipulation in the record of that case:

"It is intended that all other questions, including the questions of insolvency, vel non, and the extent thereof, the status of subscribers to the guaranty fund, and the question as to the liability of particular stockholders for debts created before they became such, or after the bank passed into the control of the Bank Commis-

sioner, and all other relevant questions are reserved for the future determination of the Court, as being unnecessary for present decision".

The fact that it has been the practice under the National Banking Act (U. S. Rev. St. Sec. 5151) to impose this liability upon all stockholders of record of the date of the receivership is neither precedent nor authority in this state. The Constitution of the United States is silent on the subject, and the statute is merely a banking regulation. In 7 C. J. 769 Sec. 607, it is said; "This liability is created for the sole benefit of creditors, and is held to arise purely by force of statute and not to be contractual in its nature". In this State the very existence of a bank is contingent upon its being subject to a stockholder's liability in addition to the payment for the stock, and this liability has been declared in all of the cases cited to be contractual in its nature and enforceable in the manner provided. It is not an arbitrary exercise of power by the Legislature, but a contractual obligation, which is a condition precedent to the conduct of a banking business by a corporation. Plaintiff's counsel have cited numerous cases to the effect that this is an arbitrary power in the Legislature, and that the liability is in the nature of a special or trust fund for the security of creditors generally. Our decisions are upon the theory, and they have so construed the language of our Constitution, (Hammond vs. Straus, supra, and Colton vs. Mayer, supra), that there is individual responsibility of the stockholder to the creditor who became such during such individual stockholding, and that this liability is not ended by the transfer of his stock, and this is in line with the last clause of the constitutional provision which reads, "The books, papers and accounts of all banks shall be open to inspection, under such regulations as may be prescribed by law", and with what was said by Judge Boyd, already quoted, from Murphy vs. Wheatley, supra.

All irregularities, if any, as to the time and method of presenting to the Court the matters herein considered were waived by the solicitors for the respective parties, and the questions submitted on their merits.

The order and decree of June 19, 1933, will be rescinded and revoked.

D. Lindley Sloan,
Frank G. Wagaman.

Filed July 27, 1935.

DECREE

STATE OF MARYLAND VS. THE PEOPLES BANKING COMPANY OF SMITHSBURG, MARYLAND	NO. 12,277 EQUITY IN THE CIRCUIT COURT FOR WASHINGTON COUNTY IN EQUITY

DECREE

The matter of the petition of the stockholders of the above named Bank heretofore filed in this cause on February 15, 1935, praying revocation of the order hereinafter referred to, the answer of the Bank Commissioner, Receiver of said Bank, thereto, the evidence, stipulations and all other matters herein referring to the liability of the stockholders of said Bank for the debts thereof having been read and considered, and counsel for the respective parties having been heard, it is thereupon this 31st day of July A. D., 1935, by the Circuit Court for Washington County, pursuant to and in conformity with the opinion heretofore filed in this cause on the 27th day of July, A. D., 1935, adjudged, ordered and decreed that the order that this Court heretofore passed and filed herein on the 19th day of June, A. D., 1933, decreeing that each stockholder of The Peoples Banking Company of Smithsburg pay to John J. Ghingher, Bank Commissioner, Receiver for The Peoples Banking Company of Smithsburg an amount of money equal to the par value of the share or shares of the capital stock of The Peoples Banking Company of Smithsburg held by him and authorizing and empowering said Bank Commissioner to collect the same by appropriate legal proceedings, be and the same is hereby revoked and rescinded, without prejudice to such further proceedings as the receiver may be advised are proper and in accordance with the opinion heretofore filed.

D. Lindley Sloan,

Frank G. Wagaman.

Filed July 31st, 1935.

Leave of Court having been first had and obtained, the following Order for appeal was filed.

ORDER FOR APPEAL

STATE OF MARYLAND Vs. THE PEOPLES BANKING COMPANY OF SMITHSBURG, MARYLAND, A Body Corporate	NO. 12,277 EQUITY IN THE CIRCUIT COURT FOR WASHINGTON COUNTY

Mr. Edward Oswald, Clerk:

Please enter an appeal to the Court of Appeals of Maryland from the final decree in this cause dated the 31st day of July, A. D., 1935, revoking and rescinding the Order passed on the 19th day of June, A. D., 1933, in the above entitled cause, which said order had decreed that each stockholder of The Peoples Banking Company of Smithsburg, Maryland; a body Corporate, pay to John J. Ghingher, Bank Commissioner, Receiver, an amount of money equal to the par value of the stock held in said Bank and had further authorized and empowered said Bank Commissioner to collect the same by appropriate legal proceedings.

Elias B. Hartle,
William H. Bovey,
Counsel for Receiver.

Filed August 7th, 1935.

DOCKET ENTRIES

STATE OF MARYLAND VS. PEOPLES BANKING COMPANY OF SMITHSBURG, A Body Corporate	NO. 12,277 EQUITY IN THE CIRCUIT COURT FOR WASHINGTON COUNTY IN EQUITY

Bill in Equity for a receiver and affidavit filed April 5, 1933, and Exhibit A filed April 24, 1933.

Answer and demurrer of The Peoples Banking Company filed April 15, 1933.

Amended answer to Bill of Complaint filed May 4, 1933.

Decree passed and filed May 5, 1933 appointing John J. Ghingher, Bank Commissioner of Maryland, Receiver.

Bond filed and approved May 5, 1933.

Petition and two exhibits and order of Court thereon determining stockholders' liability and authorizing receiver to collect and enforce payment thereof filed June 19, 1933.

Petition to file a Bill in Equity against the delinquent stockholders and Order of Court thereon filed December 26, 1934.

Petition to intervene, affidavit thereto and Order of Court filed February 15, 1935.

Petition to rescind order of June 19, 1933, affidavit thereon and Order of Court filed February 15, 1935.

Answer to petition to show cause filed March 6, 1935.

Opinion of Court filed July 27, 1935.

Decree passed and filed July 31, 1935.

Petition for authority to take appeal and Order of Court thereon filed August 6, 1935.

Order for appeal filed August 7, 1935.

STATE OF MARYLAND,

WASHINGTON COUNTY, to wit:

I, Edward Oswald, Clerk of the Circuit Court for Washington County, do hereby certify that the aforegoing is truly taken from the Record of Proceedings in the above entitled cause.

IN TESTIMONY WHEREOF I hereunto set my hand and affix the seal of the Circuit Court for Washington County at Hagerstown, this 27th day of August, A. D., 1935.

EDWARD OSWALD, Clerk.

Approved as the record in the appeal of the above entitled case to the Court of Appeals of Maryland.

ELIAS B. HARTLE,
Counsel for Receiver, Appellant.

WILLIAM H. BOVEY,
Special Counsel for Receiver, Appellant.

D. ANGLE WOLFINGER,
JOHN WAGAMAN,
CHARLES F. WAGAMAN,
Attorneys for Appellees.

[fol. 43] In Court of Appeals of Maryland, October Term, 1935

No. 61

John J. Ghingher, Bank Commissioner, Receiver for The Peoples Banking Company of Smithsburg, Maryland,

vs.

The Stockholders of the Peoples Banking Company of Smithsburg, Maryland, a Body Corporate

Docket Entries

Appeal from the Circuit Court for Washington County. Filed August 29, 1935.

January 22, 1936. Decree reversed, and cause remanded, with costs to the appellant. Opinion filed. Op.—Mitchell, J.

February 20, 1936. Decree filed.

February 20, 1936. Motion for Reargument filed.

April 15, 1936. Motion for Reargument overruled.

Bill of costs omitted in printing.

[fol. 44] In Court of Appeals of Maryland, October Term, 1935

No. 61

John J. Ghingher, Bank Commissioner, Receiver for the Peoples Banking Company of Smithsburg, Maryland,

vs.

The Stockholders of The Peoples Banking Company of Smithsburg, Maryland

Opinion—Filed January 22, 1936

Judge Mitchell delivered the Opinion of the Court:

On the 5th day of May, 1933, John J. Ghingher, then Bank Commissioner of the State of Maryland, was appointed

receiver of The People's Banking Company of Smithsburg, hereinafter called the bank, by the Circuit Court for Washington County, Maryland, and assumed charge of the affairs of the bank in accordance with the provisions of Section 9 of Article 11 of the Code of Maryland, as supplemented by Chapter 46 of the Acts of 1933, commonly known as the "Emergency Banking Act," which latter Act took effect on March 4th, 1933.

On June 19th, 1933, a petition was filed by the receiver, which, in substance, set forth that the bank was originally incorporated on January 24th, 1910, under the provisions of Article 11, with a capital stock of $20,000, divided into 2,000 shares of the par value of $10.00 each; and that on January 13th, 1922, the original articles of incorporation of said institution were amended, whereby the capital stock was increased to the sum of $40,000, divided into 4,000 shares of like par value; all of which stock was outstanding at the time of the filing of the petition.

It was further alleged in the petition, that in the course of the liquidation of the affairs of the defendant bank, the [fol. 45] Commissioner had ascertained, with absolute certainty, the existence of a deficiency between its assets and liabilities, far in excess of $40,000, representing the approximate par value of the authorized and outstanding capital stock of the institution; and accordingly, it was prayed that an order be passed determining and adjudging that each stockholder of the bank be required to pay to the receiver a sum equal to the par value of the stock held by him; and finally, that the petitioner be authorized and directed to collect, and enforce payment thereof against the stockholders through appropriate legal proceedings.

On the date the petition was filed, the Court passed a summary order decreeing that each stockholder of the bank be required to pay to the receiver an amount equal to the par value of the share or shares of the capital stock of the institution held by him; and authorized and empowered the receiver to collect and enforce payment of the stock liability.

On February 15th, 1935, a petition was filed in the receivership proceedings, by Daniel E. Bachtell and others, in which it was set forth that the petitioners had been made defendants in a separate suit filed in said court by the re-

ceiver on January 28th, 1935, for the purpose of recovering the statutory liability upon stock held by them in said bank.

The petitioners alleged that they had only recently acquired knowledge of the summary order passed against them; that they were advised that said order precluded them, and each of them, from making their respective defense on the merits, and thereby precluded any denial of the need for, or liability of the petitioners upon, the assessment made in the order; and, after setting forth that not having been made parties to the suit at the time of the passage of the order, they were taken by surprise, through the attempted enforcement against them, they further alleged as follows:

"That your petitioners are informed, believe and therefore allege that the various debts and liabilities of said The Peoples Banking Company of Smithsburg, Maryland, for the payment of which recovery is sought in the aforemen- [fol. 46] tioned equity cause, accrued against said bank at various times over a period of years, and that all of said debts and liabilities did not accrue during the time that all of your petitioners were alleged holders of the stock of said banking company.

"That said order was passed without any allegation or proof that your petitioners held stock in said The Peoples Banking Company of Smithsburg, Maryland, at the time or times when the various debts and liabilities of said banking company accrued against it.

"That said order was passed without any allegation or proof that the various debts and liabilities of said bank accrued during such time or times as your petitioners were alleged holders of stock of said banking company.

"That your petitioners are informed, believe and therefore allege that even though they should be held liable to an assessment for any payment of double liability upon the shares of stock alleged to be held by them, that your said petitioners are, if liable at all, which they do not admit, liable only under the provisions of the banking laws of Maryland, for such debts and liabilities of said bank as accrued during the respective periods during which they may be proved to have held stock therein.

"That the aforesaid order renders your petitioners liable as of course as alleged stockholders of said banking company, and likewise renders them, if liable at all, which

your petitioners do not admit, liable for larger sums of money than they, if liable, are required by law to pay.

"That the statutes of Maryland, under and by virtue of which said order of assessment was passed, impair the obligation of contracts, are discriminatory and deprive your petitioners of equal protection of the law, deprive your petitioners of property without due process of law, and otherwise contravene the provisions of the constitutions of Maryland and of the United States."

Finally, the petition prayed that the aforesaid order, passed on June 19th, 1933, be rescinded; and that in event the prayer for rescission be not granted, the said order be so modified as to permit defendant stockholders in said bank to offer any and all defenses they, or any of them, might have to the proceeding against them.

[fol. 47] Upon the aforegoing petition a nisi order was passed on February 16th, 1935, requiring the receiver to show cause why the petition should not be granted.

A second petition to intervene in the proceedings was filed by certain stockholders, alleging, on their part, payment of the assessments against them as stockholders, as having been made through inadvertence and mistake, and their intention to sue the receiver for the recovery of such payments. Said latter petitioners were, by order of the Court passed on February 16th, 1935, permitted to become parties to the suit.

On March 6, 1935, the receiver filed his answer to the aforegoing petition on February 15, 1935, in substance denying all the allegations of the petition.

For the purposes of the hearing, a stipulation was filed in the proceedings by counsel for the respective parties, as follows:

"That the times at which the various stockholders of the above named bank acquired their respective share or shares of its capital stock are correctly shown by the stock books of said company, which said stock books this honorable Court shall take and consider as having been duly offered in evidence and proved.

"That at the time of the closing of the aforesaid bank, the various stockholders who are petitioning this Court to strike out the assessment for double liability heretofore made against them, had on deposit in said bank the various

sums of money shown on the lists and schedules of deposits herewith filed, which said deposits shall be taken as duly proved by competent evidence in this cause.

"That deposits which are now liabilities of said bank and were such at the time of its closing were made and its other liabilities incurred from time to time over a period of years, and that all of its said deposits were not made or its other liabilities incurred during the time that all of its stockholders of record at the time of its closing were such.

"That some of the shares of stock of said bank have been held and owned continuously by the same petitioner or petitioners from before June 1st, 1910, to the present time."

[fol. 48] Attached to and forming a part of the stipulation, is found a list of stockholders who became such prior to June 1st, 1910, and a detailed statement of the respective amounts on deposit in said bank to the credit of the petitioning stockholders.

For the purposes of the hearing, it was admitted: "That without resort to the liabilities of stockholders the total assets of said bank will be insufficient to pay its liabilities to the extent of at least $40,000, and that unless recovery is made from stockholders of this bank, complete liquidation of its assets will leave more than $40,000 of its debts unsatisfied."

After a hearing, the Chancellors, on July 31st, 1935, passed a decree re-cinding the order of June 19th, 1933, whereby the receiver was authorized to enforce the liability of stockholders in said bank. The decree, however, was passed "without prejudice to such further proceedings as the receiver may be advised are proper, and in accordance with the opinion filed"; which opinion, in substance, limits the respective liability of stockholders at the time of receivership, to debts of the bank contracted during the period of such stock ownership. From that decree this appeal is taken.

The chief question presented for our determination, therefore, involves the point of time at which the double liability of a stockholder in a corporation engaged in banking, becomes fixed with respect to such stockholder, to the extent that he may be compelled to contribute his statutory pro rata share towards a fund whence are to be paid, as far as possible, the debts of the corporation, the same being insolvent.

As a preliminary step in such inquiry, a brief retrospect, embracing the legislative and constitutional antecedents of the present law relating to this subject, may tend to assist in its elucidation.

Today, banks and trust companies in this State are governed by the same statutes. Earlier, the two classes of corporations were legislated upon under separate Articles in the Code, one dealing with "Banks" and the other with "Corporations." Still earlier, so far as stockholders' liability is concerned, banks alone were subject to this pro- [fol. 49] tective provision for the benefit of creditors of such institutions. And farther yet in the past, upon the failure of a bank, its stockholders lost only what money they had actually invested, and could not be compelled to make up any deficiency that might develop in the final settlement of the bank's affairs.

Specifically, then, prior to the adoption of the Maryland Constitution of 1851, bank stockholders, in case of bank failure, were not liable to contribute to anyone any part of the deficit represented by the bank's unpaid debts.

By the Constitution of 1851, stockholders in new or rechartered banks were made liable, in the event of corporate insolvency, "to the amount of their respective share or shares of stock," in satisfaction of the bank's creditors.

The Constitution of 1864 made no material change in this provision; none was made in the 1867 Constitution; and Section 39 of Article 3 now reads:

"The General Assembly shall grant no charter for banking purposes, nor renew any banking corporation now in existence, except upon the condition that the stockholders shall be liable to the amount of their respective share or shares of stock in such banking institution, for all its debts and liabilities upon note, bill or otherwise; the books, papers and accounts of all banks shall be open to inspection under such regulations as may be prescribed by law."

In 1868 the Legislature, by Chapter 471, Section 61, (now Sec. 76, Art. 23, Code,) clarified the status of executors, trustees, and similar persons holding stock for others, as to the effect of any liability thereon.

In 1892, by Chapter 109, the Legislature added new sections to the "Corporations" Article of the Codes; one of which Section 85-L of Article 23, imposed liability for cor-

porate debts upon stockholders in safe deposit, trust and loan companies. Certain other corporations were also included, but subsequently eliminated. Members of a partnership being potentially liable for partnership debts to the extent of all they possessed, if required, and stockholders in banks being doubly liable in case of corporate insolvency, the Legislature evidently deemed it not inequitable that some such provision should be made to cover the Class of [fol. 50] stockholders named; and accordingly, imposing a less onerous burden than that borne by partners, but heavier than that of bank stockholders, it first fixed the liability of stockholders in safe deposit, trust and loan companies at double the value of the stock owned, which, together with the amount of investment in stock, in reality was "triple liability."

Later, in 1904, by Chapter 101, amending the Act of 1892, the liability of such investors was limited to an amount equal to the par value of the stock owned; thereby reducing the so-called "triple liability" to the present "double liability", the same as in the case of stockholders in banking corporations. And under its provisions, the receiver of an insolvent corporation was clothed with authority to enforce the double liability of its stockholders. This enactment effected a change in the remedy of creditors, in that prior thereto the claims of creditors had been enforced by an individual suit against a stockholder. The new law made the receiver, representing the interests of the corporation, as well as all its creditors, the proper party to initiate proceedings against all the stockholders for the enforcement of their statutory liability.

This was the situation at the beginning of 1908; and in that year Chapter 153 was enacted, making minor changes in the Act of 1904. At the same session, the legislature, by Chapter 240, Section 40, added new language to the Act of 1868, declaring that except in the case of banks, for which provision was made in the Constitution, (Sec. 39, Art. 3,) and except as provided elsewhere in the "Corporations" Article, (e. g., Sec. 147, relating to trusts, etc., companies; and Sec. 77, requiring stockholders to complete payments on stock subscriptions, in certain contingencies,) no stockholder should be held liable for corporate debts. The effect of this Act was to make clear that the Act of 1892 did

not apply to banks, and to point to the Constitution as the source of bank stockholders' liability.

In 1910, by Chapter 219, the Legislature revised the [fol. 51] "Banks" Article of the Code, repealed such of the provisions of the "Corporations" Article as applied to trust companies, and, combining them with the bank provisions, changed the title of Article 11 from "Banks" to "Banks and Trust Companies."

By virtue of this coalescence of statutes, the receiver of a bank, for the first time, was empowered to enforce the liability of its stockholders, collecting their contribution to the common fund, from which he would make distribution to the bank's creditors.

In view of the inauguration of this new system of liability enforcement, involving a change in the theories of recovery, and a corresponding modification of the rules of evidence, the cases which had been decided during the existence of the old practice were no longer controlling.

True, the statutes construed in those cases, while then relating to corporations other than banks, have since become part of the banking laws. But the Court was there considering an original legislative enactment pure and simple, lacking any specific constitutional background, and was therefore bound to construe the same according to the principles of statutory construction.

The present law upon the subject of stockholders' liability being the same in the case of banks as in the case of trust companies, it might be argued that the trust company law having been construed before it became a part of the bank law, the effect of combining the trust company law with, and making it a part of the bank law, should, under the doctrine of stare decisis, make mandatory the acceptance of prior judicial construction, in cases involving banks.

[fol. 52] But it must be recalled that the trust company law dates from 1892; its receivership feature dates from 1904, and it was merged with the banking law in 1910. The law of 1910, so far as it related to banks, was but an amplified re-statement of the constitutional provision, detailing in a legislative Act an axiom of the organic law of the State which had existed for nearly sixty years before the Legislature placed it in the Code.

Therefore the analogy falls, for the reason that we have before us, not a simple Act of Legislature, and as such, open to construction under the rules of statutory interpretation, but, in reality a basic provision of the State Constitution, as amplified in administrative detail by a subsequent act of the lawmaking body of this State.

The question, then, being one of constitutional and not statutory construction, and finding no case in which this section has been previously expounded, it is presented as one of first impression. Viewed in that aspect, the controlling force in its adjudication must be developed from an inquiry into the underlying purpose sought to be accomplished by its terms. One quickly concludes that purpose to be the protection of bank creditors. The debates of the Maryland Constitutional Convention of 1864, when this section (Sec. 39, Art. 3), was under discussion with a view to amendment, are affirmatively illuminating upon this point..

The object being apparent, and a doubt arising as to the method of its accomplishment, the resolution of that doubt depends upon the answer to the inquiry: Of a number of possible interpretations, which is best calculated to insure the rights of creditors, and at the same time operate the least harshly upon those who must bear the burden of liability?

In the case at bar, two courses lie open:

(a) To hold liable all persons owning stock at the time when it first becomes apparent that the bank's normal [fol. 53] assets are insufficient to meet its obligations, and the first step is taken to enforce stockholders' liability.

(b) To hold liable those who owned stock at the times when the various transactions took place, out of which arose the liabilities existing at the time of insolvency.

Arguments advocating either course are fraught with possibilities of inequity, injustice and hardship upon someone.

The theory of holding former stockholders liable arose as a matter of necessity, in order to prevent a failure of the remedy made mandatory by the Constitution.

Originally, the enforcement of the double liability of bank stockholders presented some difficulty. The creditor

was entitled to assert his claim, and the stockholder was bound to fulfill his obligation under the Constitution. This liability not being an asset of the bank, in the sense that the bank itself could collect from him, it became apparent that the creditor must proceed directly against the individual stockholder.

There was no actual contract, in the first instance, between stockholder and creditor; the contract being tangibly between the stockholder and the bank. Therefore, the creditor having a right of action, and a source of liability from which his claim eventually was entitled to be satisfied, and the Constitution being silent as to the method of its enforcement, the law created the fiction of a contract between the creditor and the stockholder, for the purpose of enabling a suit, the result of which would be a fulfillment of the constitutional guaranty established for the protection of the public in its dealings with institutions chartered by the State to conduct a banking business.

The suit being brought upon this fictional contract, the trial thereof became subject to the rules of evidence in cases of contract and as a natural and logical consequence, the defendant could not be held liable for any claims [fol. 54] against him which accrued at a time prior to his assuming the relation to the bank out of which arose the liability sought to be enforced. The Courts felt bound to reject claims which did not arise during the period of stockholdership of the defendant; and from the numerous cases which were decided upon the basis of this principle, the doctrine of absolute nonliability of bank stockholders for debts occurring at a time when they did not occupy that relation to the bank, came to be considered the settled law of this State in suits by creditors against individual stockholders.

It will be observed, however, that the Constitution does not fix the maximum liability to which stockholders in a banking institution, organized under the authority thereof, may be subjected; it does, though, fix the minimum liability of such stockholder, which, under its mandate, shall be "to the amount of their respective share or shares of stock in such banking institution, for all its debts and liabilities upon note, bill or otherwise." Nor does it limit the liability of stockholders to such debts as may have been incurred by the bank during the respective period of stock

ownership. It creates a liability, as an incident to stock-ownership in a banking corporation, for all its debts; and it is nowhere apparent that it was the intention of the framers of the Constitution to place upon creditors of an insolvent bank, or upon a receiver of its affairs, the insurmountable burden of proving, from day to day, and perhaps over a long period of years, the exact financial status of a banking corporation, as a condition precedent to the recovery of liability.

As we have observed, over a long period of years the Legislature took no affirmative action upon the constitutional provision, and meanwhile, Courts were left to deal with that provision without statutory amplifications. But since the Legislature of 1910, in the exercise of its inherent authority, enacted Chapter 219, now found in the Code under Section 72 of Article 11, Courts of this State must [fol. 55] deal with the original constitutional provision in the light of the legislative enactment, and whenever the latter is not in conflict with the former, their plain duty is to give full force and effect to the statute. That statute is explicit and mandatory. It provides: "Stockholders of every bank and trust company shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts and engagements of every such corporation, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such stock. * * * And the liability of such stockholders shall be an asset of the corporation for the benefit ratably of all the depositors and creditors of any such corporation, if necessary to pay the debts of such corporation. * * *"

Construing the quoted portion of the aforegoing statute, and giving to the words used therein the ordinary acceptation of their meaning, we must conclude that "stockholders" naturally mean those who are such at the time it becomes necessary to enforce liability. It cannot mean those who formerly held stock, because such persons ceased to be stockholders upon the assignment of their stock. Such a construction is not only reasonable, but it is fortified when applied in connection with Section 71-M of the Emergency Banking Act of 1933, which, apparently being predicated upon the theory that liability of the transferor ceased upon the ordinary bona fide transfer of bank stock, especially provided as follows:

"Nothing contained in this Act shall be construed to relieve any stockholder of record in any banking institution at the time of the passage of this Act, from the liability imposed by Section 72 of this Article. Any person who may be a stockholder at the commencement of said period of custody and the subsequent transferee of record of said stock at the time the statutory liability for assessment shall become enforceable, shall be jointly and severally liable to the receiver for the statutory assessment on said shares. [fol. 56] The rights of indemnity and exoneration as between a stockholder as of the date of the beginning of said custody and his transferee and between subsequent transferees during said period shall not be affected by this provision, but the liability of such transferor shall terminate whenever the custody of the Bank Commissioner shall cease by reason of the exemption of the banking institution whose stock is so transferred, from the provisions of this Act as hereinbefore provided in Section 71-A, or upon the cessation of the Bank Commissioner's custody by the expiration of the time limited in said section, whichever shall first occur."

Again, it must be remembered that the statute provides that the stockholders' liability shall be an asset of the corporation for the benefit of all the creditors and depositors, if and when necessary to pay its debts. This language does not refer to persons who may have been creditors but are not now, but to those who are creditors, now, and to all of them, regardless of when their rights accrued in relation to stock ownership.

One can readily visualize the vast detail of bookkeeping, the labyrinth of accounting, in which such proceedings might well become enmeshed, as a result of attempting to ascertain what were the precise liabilities of various stockholders over a period of years, involving a stupendous quantity of petty transactions, and a review of many thousands of items found among the records of a bank, in an effort to determine the exact degree of liability of a particular defendant. Indeed, before the Act of 1910, Judge Boyd, in Murphy v. Wheatley, 102 Md. 515, reluctantly adhering to the old theory, based upon the fiction of a contract between creditor and stockholder, commented upon the regrettable consequences necessarily flowing therefrom.

[fol. 57] But when the Act of 1910 merged the trust company law with the bank law, and gave the bank receiver the power to enforce double liability against stockholders and make distribution to creditors, it swept away the fictional contract previously found necessary in order to achieve the object of the constitutional guaranty; and the right of action no longer being one of the creditor in person against an individual stockholder, but of the receiver against all the stockholders, a different theory of recovery was proper to be invoked.

In other words, the contract of the stockholder with the bank, not being a purely voluntary one, but being imposed upon him by the Constitution, was not to be restricted to such a narrow interpretation as that required when the suit was a personal one between the creditor and the stockholder. Under the fictional contract, the stockholder could be strictly held to nothing beyond the pale of his actual period of possession of the stock. Under the absolute contract between the stockholder and the bank, springing from the constitutional provision, his liability was a broad one, and included the debts of the bank as and when they reached the stage of enforceable claims against the bank, regardless of the time when the particular transaction out of which the claim arose, had its inception.

The logic runs thus: The Constitution says the stockholder shall be liable for the bank's liabilities; he shall be liable when the bank is liable; his liability is concurrent with that of the bank. He shall be called upon to pay, when the bank is called upon. If the bank is never called upon, then his potential liability dies. If it is called upon, by reason of a liability ripening into an active claim, then the quiescent liability of the stockholder is quickened into life, and his obligation to contribute becomes fixed and definite.

The Statute, amplifying the Constitution, says such lia-
[fol. 58] bility shall be an asset of the bank for the benefit of its creditors, if necessary to pay its debts. Therefore, until necessity demands, such liability remains in suspension, covering the entire body of stockholders; and when invoked, it attaches to the stockholders—that is, those holding stock in the bank at the time of such invocation.

The adoption of this interpretation is susceptible of least criticism from the standpoint of justice and equity; and

is more nearly in accord with that certainty and simplicity which should accompany the administration of law.

To hold the contrary view, would engulf all concerned in a swirling flood of litigation, so lengthy, so tedious, and so costly, that ultimately the inconclusive and discouraging nature of resort thereto would defeat the very end sought to be achieved by the basic law.

A further contention is made that, with respect to stockholders who were such before the Act of 1910 took effect, their liability is still governed by the law as it stood before 1910, leaving them subject to suits by individual creditors for the enforcement of their claims; and that so far as the Act of 1910 is attempted to be enforced in that respect, it is unconstitutional, in that it takes away a remedy previously enjoyed by such creditors. But in the view we have taken, the liability of a stockholder does not become enforceable until the bank's inability to pay the creditors is manifest; and as the record indicates that such a contingency did not arise in the present case until long after the passage of the Act of 1910, there can be no force in this argument. Furthermore, even had the Legislature not reserved existing rights, as it did in that Act, it is well settled that no one has a vested right in a remedy, and that the Legislature may change a legal remedy, so long as the one substituted is equally effective in coercive force with [fol. 59] the one repealed. B. & O. R. R. v. Maughlin, 153 Md. 367.

In view of the broader field of contention between the respective parties to this suit, the question of the right of a depositor-stockholder to set off his credit as a depositor of the bank against his liability as a stockholder of the bank, was not pressed in the argument before this Court. But inasmuch as that question was referred to and dealt with in the carefully prepared opinion of the lower Court, we deem it proper to dispose of it here.

In Cahill v. Original Big Gun Ass'n., 94 Md. 353, it is said: "The liability of the stockholder then under the statute having been settled, as a debt due from the stockholder to the creditor, there can be no valid reason, it seems to us, why a stockholder who is also a creditor should not be entitled as a matter of equity to set up as an equitable defense, the debt of the bank to him against his own liability. Mr. Cooke in his book on Corporations, vol. 1, sec. 225 (c),

says that it has been held that where the statute creates a fund out of which the creditors are to be paid ratably, then the stockholder cannot set off an indebtedness of the corporation to him. He must pay in what the statute requires and then prove his claim against the corporation like any other creditor. But where the shareholder's liability by statute is immediate and personal and several and any creditor may sue any shareholder, then the shareholder may set off a debt owing to him from the corporation, when he is sued by a corporate creditor. In 1 Beach on Private Corporations, sec. 727, it is said: 'But if the statute imposes upon shareholders a personal liability to creditors, immediate and several, so that any creditor may institute an independent action against any shareholder for the enforcement of corporate debts, then a defendant shareholder may set off debts due from the company to himself.' In Taylor on Private Corporations, sec. 732, it is thus stated: [fol. 60] 'When a single creditor can and does sue a shareholder at law, to enforce the statutory liability of the latter, it is then competent for the shareholder to set off a debt owing him from the corporation.' ''

The case from which the above quotation is taken, is cited in the opinion of the lower Court in justification of its favorable ruling for the allowance of a depositor-stockholder's set-off in the instant case. We cannot agree with that conclusion; (a) because we are not here dealing with a corporation charter which, as in the cited case, specifically provided that: "The continuance of this corporation shall be on the condition that the stockholders and directors of the corporation shall be liable to the amount of their respective share or shares of stock in this corporation for all its debts and liabilities upon note, bill or otherwise;" and, (b) because that decision was rendered prior to the passage of the Act of 1910 definitely declaring the liability of all stockholders to be an asset of the corporation, for the use and benefit of all creditors alike.

In Poe on Pl. & Pr., vol. 1, sec. 613, it is said: "A set-off, technically, means a cross claim, and is confined to mutual debts between the plaintiff and defendant. * * To entitle the defendant to make such a defense, he must not only have a right to receive the amount due him from the plaintiff, but his claim must be of such a nature that he can sue for and recover it in a court of law. * * And it may

be stated, in general terms, that to authorize a set-off the debts must be mutual, must be between the parties in their own rights, must be of the same kind and quality, and be certain and clearly ascertained or liquidated."

Applying the above fundamental principles to the facts in the instant case, we are unable to differentiate between stockholders who are depositors, and stockholders who are not. The former class stand in the dual capacity of debtors and creditors of the involved corporation, and should be so [fol. 61] dealt with in the liquidation of its affairs.

For the reasons stated, the decree below will be reversed, and the cause remanded for further proceedings in accordance with this opinion.

Decree reversed, and cause remanded, with costs to the apppellant.

[File endorsement omitted.]

[fols. 62 & 63] In Court of Appeals of Maryland, October Term, 1935

No. 61

John J. Ghingher, Bank Commissioner, Receiver for the Peoples Banking Company of Smithsburg,

vs.

The Stockholders of the Peoples Banking Company of Smithsburg

Decree—Filed February 20, 1936

The Appeal in the above entitled case, standing ready for hearing, was argued by counsel for the respective parties, and the proceedings have since been considered by the Court.

It is thereupon on this 19th day of February, 1936, by the Court of Appeals of Maryland, and by the authority thereof, adjudged, ordered and decreed that the decree dated July 31st, 1935, of the Circuit Court for Washington County, be and the same is hereby reversed, and cause remanded, with costs to the appellant.

Carroll T. Bond, Chief Judge, for the Court

[fol. 64] IN COURT OF APPEALS OF MARYLAND

ORDER ALLOWING APPEAL—Filed July 13, 1936

And now, to wit, on July 13, 1936, it is Ordered, That an appeal from the Court of Appeals of Maryland to the Supreme Court of the United States be allowed as prayed upon the filing of a bond for costs in the sum of Five Hundred ($500.00) Dollars with good and sufficient security, and that United States Fidelity and Guaranty Company is accepted as surety on said bond and said bond is now approved.

Carroll T. Bond, Chief Judge of the Court of Appeals of Maryland.

[fol. 64½] [File endorsement omitted.]

[fol. 65] IN COURT OF APPEALS OF MARYLAND

[Title omitted]

ASSIGNMENTS OF ERROR—Filed July 13, 1936

Now come G. Wm. Gardenhour, et al., appellees in the Court of Appeals of Maryland, petitioners in the Circuit Court for Washington County, Maryland and hereinafter called "appellants" and for their assignment of errors show:

1. That the Court of Appeals of Maryland erred in holding valid and constitutional said section 72 and in holding that said statute imposed upon the appellants a liability as holders of bank stock different from the contractual liability assumed by said appellants under the long established and well settled law of Maryland at the time of their respective purchases of shares of stock and thereby impaired the obligation of the contract entered into by said appellants contrary to section 10 of Article 1 of the Constitution of the United States, and deprived them of property without due process of law contrary to section 1 of the Fourteenth Amendment of the Constitution of the United States in the following respects:

A. By rendering them liable as stockholders of record for all the debts of the bank irrespective of the times when stock was purchased and the times the bank's debts were incurred, contrary to the long established and well settled law of Maryland, prior to the instant case, that stockholders in banks are liable under the aforesaid section 39 of Article 3 of the Constitution of Maryland and previous statutes only for debts incurred by the bank while they were stockholders.

B. By rendering them liable to the Receiver of the particular bank, contrary to the long established and well settled law of Maryland prior to the instant case, that stockholders of banks are liable under the aforesaid section 39 of Article 3 of the Constitution of Maryland and previous statutes only to the creditors thereof, and thereby [fol. 66] deprived them of the right to set off against their respective liability what, if any, debt was due them from the bank as was by said long established and well settled law of Maryland prior to the instant case, permitted in suits against them by individual creditors.

2. That the Court of Appeals of Maryland erred in holding valid and Constitutional Section 72 and in holding that said statute imposed liability only upon stockholders of record contrary to the long established and well settled law of Maryland at the time of the making of deposits in said bank by the appellant depositors and creditors of said bank, and thereby deprived them of property without due process of law contrary to Section 1 of the Fourteenth Amendment of the Constitution of the United States and impaired the obligation of their contract with the stockholders contrary to Section 10 of Article 1 of the Constitution of the United States.

A. By depriving the appellant depositors and creditors of said bank of their contractual right and all remedy to recover against stockholders who were such at the time their respective deposits were made or the bank became otherwise indebted to them, but who are no longer stockholders thereof, contrary to the long established and well settled law of Maryland prior to the instant case, that the liability of the stockholders under the aforesaid section 39 of Article 3 of the Constitution of Maryland and previous

statutes for any debt of the bank incurred while they were stockholders was in no manner affected by the mere transfer of their stock.

3. That the Court of Appeals of Maryland erred in holding valid and constitutional said section 72 as affecting and controlling the liability of the appellants who became stockholders before the passage of said section 72 and while Chapter 206 of the Acts of 1870 was the sole statute of [fol. 67] Maryland touching their liability upon bank stock, although said section 72 did not reserve the existing rights of creditors or liabilities of stockholders of banks (but did only as to trust companies and the Peoples Banking Company has no trust company powers) under the existing law (Chapter 206, Acts of 1870) at the time of its passage or taking effect, and thus said section 72 was given a retroactive and unconstitutional effect on rights and contracts created prior to its passage thus impairing the obligation of appellants' contracts and depriving the appellant stockholders and creditors of property without due process of law.

4. That the Court of Appeals of Maryland erred in limiting liability to stockholders of record, contrary to the long established and well settled law of Maryland prior to the instant case, that the language of the aforesaid section 39 of Article 3 of the Constitution of Maryland and previous statutes imposed upon stockholders of banks a contractual liability for only such debts of the bank as were incurred while they were stockholders, from which liability they were not discharged by the mere transfer of their stock, and thus only by a misconstruction of said section 72 does the same impair the obligation of contracts of these appellants and deprive them of property without due process of law.

Wherefore, the appellants pray that the said decree of the Court of Appeals of Maryland made and entered on February 20, 1936 be reversed and that said Court may be directed to enter a decree in favor of the appellants.

Respectfully submitted,

D. Angle Wolfinger, John Wagaman, Charles F. Wagaman.

[fol. 67½] [File endorsement omitted.]

[fols. 68-72] Bond on appeal for $500.00, approved and filed July 13, 1936, omitted in printing.

[fol. 73] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 74] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

STATEMENT OF APPELLANTS OF THE POINTS OF LAW ON WHICH THEY INTEND TO RELY AND THE PARTS OF THE RECORD NECESSARY FOR CONSIDERATION OF THE SAME—Filed August 20, 1936

A. Points of Law

1. That section 72 of Article 11 of the Annotated Code of Public General Laws of Maryland is invalid and unconstitutional, because it imposes upon the appellants as holders of stock in the above mentioned bank, a liability different from the contractual liability assumed by said appellants and imposed upon them under the Constitution of Maryland and under the long established and well-settled law of said State at the time of their respective purchases of shares of stock of said bank and thereby impairs the obligation of the contracts entered into by said appellants contrary to section 10 of Article 1 of the Constitution of the United States and thereby deprives them of property without due process of law contrary to section 1 of the Fourteenth Amendment to the Constitution of the United States:

(a) In that said section 72 renders the appellants liable for all debts of the bank irrespective of the times when their said stock was acquired and the times the bank's debts were incurred, contrary to their said contract and the long established and well-settled law of Maryland that stockholders in banks are liable under section 39 of Article 3 of the Constitution of Maryland and statutes passed pursuant thereto and in accordance therewith only

for debts incurred by the bank while they were stockholders;

[fol. 75] (b) And in that said section renders the appellants liable to the Receiver contrary to the long established and well-settled law of Maryland that stockholders of banks are liable under their said contracts and under the aforesaid section 39 of Article 3 of the Constitution of Maryland and statutes passed pursuant thereto and in accordance therewith only to the creditors of said Bank and thereby deprives the appellants of the right to set off against their respective liability what, if any, debt was due them from the bank, to which set off they were entitled by said contract under the long established and well-settled law of Maryland.

2. That said section 72 of Article 11 of the Annotated Code of Public General Laws of Maryland is invalid and unconstitutional because it deprives the appellants of property without due process of law contrary to section 1 of the Fourteenth Amendment to the Constitution of the United States and because it impairs the obligation of their contracts made between stockholders and creditors of the above named Bank contrary to section 10 of Article 1 of the Constitution of the United States, by limiting liability to stockholders of record and depriving the appellant depositors and creditors of said Bank of their contractual right and all remedy to recover against stockholders who were such at the time their respective deposits were made, or the Bank became otherwise indebted to them, but who are no longer stockholders thereof, and depriving the appellant stockholders of the right to contribution from former stockholders, to which said rights and remedies they were entitled under said section 39 of Article 3 of the Constitution of Maryland and statutes passed pursuant thereto and in accordance therewith and under the long established and well-settled law of Maryland that stockholders were not discharged from liability by the mere transfer of their stock.

[fol. 76] 3. That said section 72 is invalid and unconstitutional and impairs the obligation of the appellants contracts contrary to section 10 of Article 1 of the Constitution of the United States and deprives them of property without due process of law contrary to section 1 of the

Fourteenth Amendment to the Constitution of the United States because said section 72 contains no reservation of the existing rights of creditors or liabilities of stockholders of banks (but does only as to trust companies and the above named bank has no trust powers) at the time of its passage or taking effect and thus retrospectively imposes upon the appellants who became stockholders in said bank before the passage of said section 72 (effective June 1, 1910 to date), and while Chapter 206 of the Acts of 1870 (effective June 1, 1870 until June 1, 1910) was the sole statute of Maryland imposing liability upon the holders of bank stock, a liability different than that imposed by said Act of 1870.

4. That the invalidity and unconstitutionality of said section 72 result, for the reasons aforesaid, only because of the misconstruction placed upon the same by the Court of Appeals of Maryland in limiting the liability purporting to be imposed by said section 72 to stockholders of record only; whereas, the proper construction of said section (in accordance with the long established and well-settled law of Maryland under said section 39 of Article 3 of the Constitution of Maryland that stockholders of banks are contractually liable only for such debts of the bank as were incurred while they were stockholders) will preserve the validity of said section and the constitutional rights of the appellants.

B. Portions of Record Necessary to Consideration of the Above Points of Law

The appellants designate as the portions of the record necessary for the consideration of the points relied upon [fol. 77] by them, to be the entire transcript of the record transmitted to the Supreme Court of the United States by the Court of Appeals of Maryland, except as follows:

The Clerk of the Supreme Court of the United States shall omit from the printed record (unless required by the rules of said Court to be included therein) the following portions of the transcript:

1. Petition for appeal from the Court of Appeals of Maryland to the Supreme Court of the United States and Order of Court thereon.

2. Citation to appellee and proof of service thereof.

3. Statement of appellants as to jurisdiction of Supreme Court of the United States.

4. Appellants' assignment of errors.

5. Statement served upon the attorneys for the appellee setting forth, and directing their attention to, the provisions of paragraph 3 of rule 12 of the Revised Rules of the Supreme Court of the United States, and acknowledging service upon them of petition for and Order of Court allowing appeal, appellants' assignment of errors and appellants' statement as to jurisdiction.

6. Statement of appellee making against the jurisdiction of the Supreme Court of the United States and moving to dismiss or affirm.

7. Stipulation for transcript of record from Court of Appeals of Maryland to Supreme Court of the United States.

D. Angle Wolfinger, John Wagaman, Charles F. Wagaman, Attorneys for Appellants.

Service acknowledged this 14th day of August, 1936.
Elias B. Hartle, William H. Bovey, Attorneys for Appellee.

[fol. 78] [File endorsement omitted.]

[Endorsed on cover:] File No. 40,838. Maryland Court of Appeals. Term No. 298. Stockholders of Peoples Banking Company of Smithsburg, Maryland, appellants, vs. Warren F. Sterling, Receiver for Peoples Banking Company of Smithsburg, Maryland, etc. Filed August 20, 1936. Term No. 298, O. T., 1936.